

AGENDA

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

Thursday, May 22, 2025 5:00 p.m.

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

The meeting will be held in person at the above date, time and location(s). Members of the Board of Directors 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, Community Power 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 speakers provide their 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 a 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. 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 to clerkoftheboard@sdcommunitypower.org. Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to Members of the Board. 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 Members of Board, and be part of the public record.

If members of the public wish to have documentation be distributed to the Board, please send it to clerkoftheboard@sdcommunitypower.org.

The public may participate using the following remote options:

Teleconference Meeting Webinar https://sdcommunitypower-org.zoom.us/j/94274587066

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 94274587066

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

REPORT ON CLOSED SESSION

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Introduction of New Community Power Staff

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 April 24, 2025, Meeting Minutes
- 2. Receive and File Treasurer's Report for Period Ending March 31, 2025
- 3. Receive and File Update on Programs

- 4. Receive and File Update on Power Services
- 5. Receive and File Update on Customer Operations
- 6. Receive and File Update on Human Resources
- 7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs
- 8. Receive and File Update on Regulatory and Legislative Affairs
- 9. Receive and File Community Advisory Committee Monthly Report

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.

10. Community Advisory Committee Report

Recommendation: Receive and file the Community Advisory Committee (CAC) Quarterly Report.

11. Presentation of Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan

Recommendation: Receive and File Preliminary Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan.

12. Approve Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC

Recommendation: Approve the proposed Second Amended and Restated Power Purchase Agreement with Pelicans Jaw Solar, LLC to modify the Commercial Operation Date ("COD"), adjust pricing based on COD, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

13. Approve Amended and Restated Power Purchase Agreement with Noble Solar, LLC

Recommendation: Approve the proposed Second Amended and Restated Power Purchase Agreement with Noble Solar, LLC to amend the Commercial Operation Date ("COD"), increase the security and pre-COD liabilities, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

14. Approve EEI Master Agreement, Confirmation and Collateral Annex with Clean Power Alliance of Southern California

Recommendation: Approve the proposed Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), 10-year EEI Confirmation, and associated Paragraph 10 Collateral Annex with Clean Power Alliance of Southern California (CPA), referred to herein collectively as "VAMO Swap Agreements" or "VAMO Swap", in substantially final form for California RPS-eligible electric energy and associate Green Attributes, and authorize the Chief Executive Officer to execute the agreements.

CHIEF EXECUTIVE OFFICER REPORT

Community Power Management 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 Community Power business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION PURSUANT TO GOVERNMENT CODE SECTION 54957

Title: Chief Executive Officer

Title: General Counsel

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

Agency designated representative(s): Paula de Sousa, Best Best & Krieger

Unrepresented employee: Chief Executive Officer and General Counsel

OPEN SESSION

ROLL CALL

REPORT ON CLOSED SESSION

ADJOURNMENT

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, June 26, 2025, at 5 pm.

Compliance with the Americans with Disabilities Act

San Diego Community Power 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 clerkoftheboard@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 available of the agenda and agenda packet are 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, requested electronically can be clerkoftheboard@sdcommunitypower.org or by mail to San Diego Community Power, P.O. BOX 12716, San Diego, CA 92112. The documents may also be posted on Community Power's website. Such public records are also available for inspection, by contacting clerkoftheboard@sdcommunitypower.org to arrange an appointment.



SAN DIEGO COMMUNITY POWER (COMMUNITY POWER) BOARD OF DIRECTORS

Don L. Nay Port Administration Boardroom 3165 Pacific Hwy. San Diego, CA 92101

REGULAR MEETING MINUTES

April 24, 2025

WELCOME

CALL TO ORDER

Chair Aguirre called the Community Power Board of Directors regular meeting to order at 5:00 p.m.

ROLL CALL

PRESENT: Chair Aguirre, City of Imperial Beach; Vice Chair Lawson-Remer, County

of San Diego (arrived at 5:10 p.m.); Alternate Director LaCava, City of San Diego; Director Inzunza, City of Chula Vista; Director San Antonio, City of Encinitas (arrived at 5:10 p.m.); Director Suzuki, City of La Mesa;

and Director Yamane, City of National City

ABSENT: None

Staff Present: Chief Executive Officer Burns; Chief Commercial Officer Vosburg;

General Counsel Tyagi; Director of Regulatory & Legislative Affairs Fernandez; Senior Policy Manager Cissna; Regulatory Manager Gunther; Senior Strategic Policy Manager Kinports; Senior Legislative Manager Welch; Program Manager Lomeli; Clerk of the Board

Hernandez; and Assistant Clerk of the Board Vences

PLEDGE OF ALLEGIANCE

Chair Aguirre led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Introduction of New Community Power Staff

Chair Aguirre welcomed new employees Cody Harrison, Senior Program Associate, Jeb Spengler, Strategic Finance Manager, and Marlene Maurer to introduce themselves.

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

- 1. Approve March 27, 2025, Meeting Minutes
- 2. Receive and File Treasurer's Report for Period Ending February 28, 2025
- 3. Receive and File Update on Programs
- 4. Receive and File Update on Power Services
- 5. Receive and File Update on Customer Operations
- 6. Receive and File Update on Human Resources
- 7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs
- 8. Receive and File Community Advisory Committee Monthly Report

There were no public comments on Consent Item Nos. 1-8.

Motioned by Director Inzunza and seconded by Director Yamane to approve Consent Calendar Item Nos. 1 through 8. The motion carried 5/0 as follows:

AYES: Chair Aguirre, Directors Inzunza, Suzuki, Yamane, and Alternate

Director LaCava

NOES: None ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer and Director San Antonio

REGULAR AGENDA

9. Quarterly Update on Regulatory and Legislative Affairs

Ms. Fernandez introduced the item and turned it over to Mr. Welch, Ms. Cissna, Mr. Kinports, and Mr. Gunther to provide the update on Regulatory and Legislative Affairs.

There were no public comments on Item No. 9.

After Board member questions, discussion and comments, the quarterly update on Regulatory and Legislative Affairs was received and filed.

10. Adopt Resolution No. 2025-03, Authorizing the Chief Executive Officer to: (1) Execute the Memorandum of Understanding ("MOU") in Substantially Final Form with Los Angeles County, through its Internal Services Department and to Negotiate and Execute any Amendments, Extensions or Renewals of the MOU; (2) Accept, Appropriate, and Expend the Equitable Building Decarbonization ("EBD") Funds in an Amount not to exceed \$1,409,316 in the FY 2025-26 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) Take all Necessary Action to Administer, Monitor, Manage and Ensure Compliance with the MOU and to Negotiate and Execute Agreements with Third-Parties to Implement the MOU or Use of Funds in Accordance with Applicable Policies, Including the Procurement Policy

Mr. Lomeli presented an overview of Memorandum of Understanding with Los Angeles County for Equitable Building Decarbonization.

There were no public comments on Item No. 10.

After Board member questions, discussion and comments, Vice-Chair Lawson-Remer motioned and seconded by Director Yamane to adopt Resolution No. 2025-03, Authorizing the Chief Executive Officer to: (1) Execute the Memorandum of Understanding ("MOU") in substantially final form with Los Angeles County, through its Internal Services Department and to negotiate and execute any amendments, extensions or renewals of the MOU; (2) accept, appropriate, and expend the Equitable Building Decarbonization ("EBD") funds in an amount not to exceed \$1,409,316 in the FY 2025-26 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) take all necessary action to administer, monitor, manage and ensure compliance with the MOU and to negotiate and execute agreements with third-parties to implement the MOU or use of funds in accordance with applicable policies, including the Procurement Policy. The motion carried unanimously as follows:

AYES: Chair Aquirre, Vice Chair Lawson-Remer, Directors Inzunza, San

Antonio, Suzuki, Yamane, and Alternate Director LaCava

NOES: None

ABSTAINED: None ABSENT: None

11. Updates to San Diego Community Power Board and Committee Compensation and Reimbursement Policy

Chair Aguirre presented updates to the Board and Committee Compensation and Reimbursement Policy.

After Board member discussion, Director Yamane motioned and seconded by Director Inzunza to adopt Resolution No. 2025-04, amending San Diego Community Power Board and Committee Compensation and Reimbursement Policy ("Policy") to increase the per diem compensation for advisory committee members; increase the cap on monthly per diem compensation for members who sit on more than one Board, Committee, or Working Group; allow committee members to receive a per diem for activities attended on behalf of Community Power, including outreach. The motion carried with six affirmative votes with one abstention as follows:

AYES: Chair Aguirre, Directors Inzunza, San Antonio, Suzuki, Yamane, and

Alternate Director LaCava

NOES: None

ABSTAINED: Vice-Chair Lawson-Remer

ABSENT: None

CHIEF EXECUTIVE OFFICER REPORT

Ms. Burns reported on Community Power's ongoing efforts and recent activities and events. She announced Mr. Vosburg's departure, thanked him for his contributions, and congratulated him on his next journey.

DIRECTOR COMMENTS

Directors shared updates on their ongoing efforts within their respective member agencies, and thanked Community Power staff.

Chair Aguirre expressed appreciation to Mr. Vosburg for his contributions.

Mr. Vosburg shared remarks on his journey with Community Power.

<u>ADJOURNMENT</u>

The Board of Directors adjourned at 6:27 p.m. to the next regular meeting scheduled for Thursday, May 22, 2025, at 5 p.m.

Maricela Hernandez, MMC, CPMC
Clerk of the Board



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

TO: Board of Directors

FROM: Dr. Eric W. Washington, Chief Financial Officer/Treasurer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Treasurer's Report for Period Ending March 31, 2025

DATE: May 22, 2025

RECOMMENDATION:

Receive and File Treasurer's Report for Period Ending March 31, 2025.

BACKGROUND:

San Diego Community Power (Community Power) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds. Community Power has prepared its year-to-date financial statements for the nine-month period ended March 31, 2025, along with budgetary comparisons.

Additionally, on May 25, 2023, the Community Power Board of Directors (Board) adopted the Community Power Investment Policy, which was subsequently revised on June 27, 2024. The objectives of the Investment Policy are to (1) safeguard the principal of investment funds, (2) meet the liquidity needs of Community Power, (3) achieve a return on funds invested, and (4) exercise a high standard of care on investment funds. The Investment Policy additionally includes provisions for regular reporting to the Financial and Risk Management (FRMC) which will be included in the Treasurer's Report.

In an effort to increase public transparency and in alignment with section 1.a of the Community Power Delegated Contract Authority Policy, Community Power will also report newly executed contracts between \$50,000 and \$125,000 for goods and services in the Treasurer's Report.

Community Power 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 presented during Financial and Risk Management Committee (FRMC) meetings.

On June 27, 2024, the Community Power Board of Directors (Board) approved the Fiscal Year 2024-25 Operating Budget that included net operating revenues of \$1,177,925,889 total expenses of \$1,143,919,262 and a resulting net position of \$34,006,627. The approved Fiscal Year 2024-25 budget also includes a capital budget to fund 16 projects, totaling 23 active projects during the fiscal year for \$16,434,280.

Subsequently, on February 27, 2025, the Board approved an amendment to the FY 2024-25 Operating Budget to increase total net operating revenues to \$1,221,258,172 and total expenses to \$1,187,090,169, resulting in a net position of \$34,168,003. Additionally, the Board approved an amendment to the FY 2024-25 Capital Budget to increase total expenses to \$144,212,340 and an amendment to the FY 2025-29 Capital Investment Plan (CIP) to \$155,910,762.

ANALYSIS AND DISCUSSION:

Financial Results

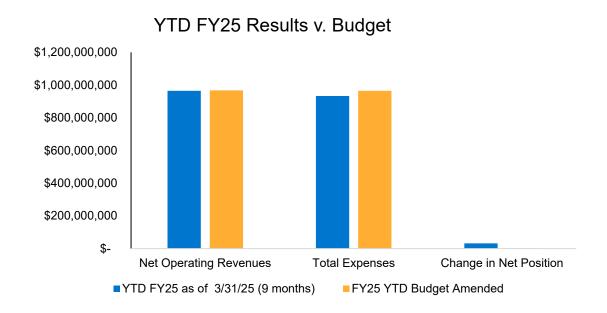
Actual financial results for the period ended March 31, 2025: \$965.0 million in net operating revenues were reported compared to \$967.1 million budgeted for the period. \$933.0 million in total expenses were reported (including \$894.7 million in energy costs) compared to \$964.7 million budgeted for the period (including \$907.4 million budgeted for energy costs). After expenses, Community Power's change in net position of \$31.9 million was reported year-to-date for Fiscal Year 2024-25. The following is a summary of the actual results compared to the Fiscal Year 2024-25 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison							
YTD FY25 as of FY25 YTD Budget						dget Variance	Budget (9/)
	3/31	/25 (9 months)		Amended		(\$)	Budget (%)
Net Operating Revenues	\$	965,031,942	\$	967,110,664	\$	(2,078,722)	99.8%
Total Expenses	\$	933,057,887	\$	964,689,480	\$	(31,631,593)	97%
Change in Net Position	\$	31,974,055	\$	2,421,184	\$	29,552,871	

- Net operating revenues finished \$2.0 million (or 0.2 percentage points) under the budget and was largely in line with expectations.
- Operating expenses finished \$31.6 million (or 3.0 percentage points) under the budget due to the lower unhedged volume energy prices. In addition to substantial invoices that are scheduled for future payment.

Figure 1: Budget Comparison versus Actual Results



For the Nine-month period ending March 31, 2025, Community Power contributed \$31,974,055 to its net position compared to the expected contribution of \$2,421,184 per the Fiscal Year 2024-25 budget. Total Community Power reserves at the end of the period were \$319,127,244 based on cash and cash equivalents — unrestricted, and total available liquidity (including lines of credit) was \$531,627,244. Community Power has a total Fiscal Year 2024-25 year-end reserve target of \$575,822,041 which is equivalent to 180-days of total operating expenses as set in Community Power's Reserve Policy and Strategic Goals

Investment Portfolio Report

Chandler Asset Management manages Community Power's investment portfolio. As of March 31, 2025, the market value of the portfolio was \$61.4 million compared to the \$51.1 million market value as February 28, 2025. The rise in market value is also reflective of an additional \$10.0 million transferred into the investment account and accrued interest during the month. The following is a snapshot of overall characteristics of the portfolio.

Portfolio Characteristics				
Average Modified Duration	2.45			
Average Coupon	3.80%			
Average Purchase YTM	4.37%			
Average Market YTM	3.84%			
Average Credit Quality*	AA+			
Average Final Maturity	2.93			
Average Life	2.54			

Account Summary

	End Values as of 02/28/2025	End Values as of 03/31/2025
Market Value	50,804,073.60	60,993,504.06
Accrued Interest	344,604.94	421,571.65
Total Market Value	51,148,678.53	61,415,075.71
Income Earned	195,984.72	195,714.34
Cont/WD	0.00	10,000,000.00
Par	51,009,166.20	61,178,447.16
Book Value	50,582,020.72	60,702,336.32
Cost Value	50,541,912.18	60,662,964.62

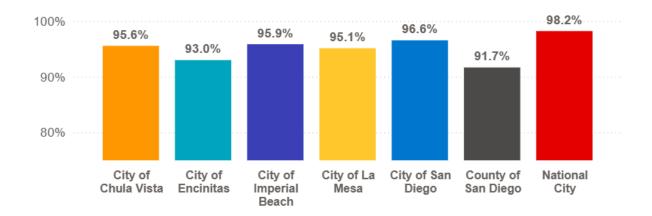
Contract Execution between \$50,000 and \$125,000

In April 2025, Community Power executed an Agreement with the San Diego Wave Fútbol Club for \$95,600 for a 2025 Local Sponsorship Agreement.

Metrics

Figure 2: Participation Rates as of 5/1/2025

Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,640	94,268	95.6%
City of Encinitas	Power100	28,827	26,809	93.0%
City of Imperial Beach	PowerOn	10,835	10,387	95.9%
City of La Mesa	PowerOn	29,496	28,062	95.1%
City of San Diego	PowerOn	624,957	603,396	96.6%
County of San Diego	PowerOn	190,538	174,698	91.7%
National City	PowerOn	19,451	19,104	98.2%
Total		1,002,744	956,724	95.4%

The Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. The participation rate for Community Power reflects full enrollment of current member agencies. 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 the state of Community Power Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes Community Power's Receivables aged 120+ Days as of May 1, 2025.

Figure 3: State of Community Power Arrearages as of 5/1/2025

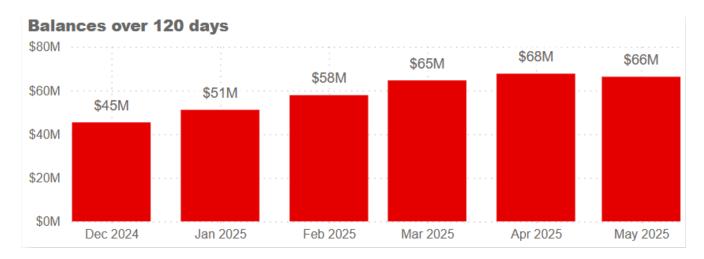


Figure 4: State of Community Power Arrearages Residential vs Commercial as of 5/1/2025

Balances over 120 days - RES vs COM



FISCAL IMPACT:

N/A

ATTACHMENTS:

A: 2025 Year-to-Date Period Ended March 31, 2025, Financial Statements.

ITEM 2 ATTACHMENT A



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 March 31, 2025, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the nine months 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 May 9, 2025

SAN DIEGO COMMUNITY POWER STATEMENT OF NET POSITION As of March 31, 2025

ASSETS

AGSETS	
Current assets	
Cash and cash equivalents - unrestricted	\$ 319,127,244
Cash and cash equivalents - restricted	14,233,326
Accounts receivable, net of allowance	102,423,140
Accrued revenue	45,001,796
Prepaid expenses	2,043,913
Other receivables	15,687,109
Deposits	9,977,229
Investments	2,302,943
Total current assets	510,796,700
Noncurrent assets	
Cash and cash equivalents - restricted	647,000
Investments	53,600,114
Capital assets, net of depreciation and amortization	1,606,134
Total noncurrent assets	55,853,248
Total assets	566,649,948
LIABILITIES	
Current liabilities	
Accrued cost of electricity	120,455,365
Accounts payable	4,325,683
Other accrued liabilities	1,653,883
State surcharges payable	588,526
Deposits - energy suppliers	3,313,000
Lease liability	780,689
Advances from grantors	13,733,326
Total current liabilities	144,850,472
Noncurrent liabilities	
Lease liability	820,498
Deposits - energy suppliers	4,410,450
Total noncurrent liabilities	5,230,948
Total liabilities	150,081,420
NET POSITION	
Restricted for security collateral	14,880,326
Unrestricted	401,688,202
Total net position	\$ 416,568,528

SAN DIEGO COMMUNITY POWER STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

Nine Months Ended March 31, 2025

OPERATING REVENUES	
Electricity sales, net	\$ 963,788,684
Grant revenue	1,150,491
Other income	1,243,258
Total operating revenues	 966,182,433
OPERATING EXPENSES	
Cost of electricity	894,737,509
Contract services	14,954,668
Staff compensation	12,007,013
Other operating expenses	12,196,668
Depreciation and amortization	437,763
Total operating expenses	 934,333,621
Operating income	 31,848,812
NON-OPERATING REVENUES (EXPENSES)	
Investment income	9,768,364
Interest expense	(431,030)
Nonoperating revenues (expenses), net	 9,337,334
CHANGE IN NET POSITION	41,186,146
Net position at beginning of year	375,382,382
Net position at end of year	\$ 416,568,528

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS Nine Months Ended March 31, 2025

CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$	998,621,781
Receipts from grantors		14,883,817
Receipts of supplier security deposits		15,187,455
Other operating receipts		1,221,064
Payments to suppliers for electricity		(907,248,507)
Payments for other goods and services		(27,588,597)
Payments for deposits and collateral		(1,924,371)
Payments for staff compensation		(11,534,492)
Payments of state surcharges		(1,822,861)
Net cash provided by operating activities		79,795,289
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES		
Proceeds from bank note		55,500,000
Principal payments - bank note		(55,500,000)
Interest payments		(393,961)
Net cash provided (used) by noncapital		
financing activities		(393,961)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments of lease liability		(489,102)
Net cash used by capital and related financing activities		(489,102)
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income received		8,852,908
Proceeds from investment sales and maturities of investments		642,757
Purchase of investments		(55,842,431)
Net cash provided (used) by investing activities		(46,346,766)
Net change in cash and cash equivalents		32,565,460
Cash and cash equivalents at beginning of year		301,442,110
Cash and cash equivalents at end of year	\$	334,007,570
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	\$	319,127,244
Restricted cash - current	Ψ	14,233,326
Restricted cash - noncurrent		647,000
Cash and cash equivalents	-\$	334,007,570
Cush and cush equivalents		33 1,007,570
NONCASH INVESTING ACTIVITIES		
Unrealized appreciation and timing differences in investment income	\$	915,456
NONCASH CAPITAL AND RELATED		
FINANCING ACTIVITIES		
Acquisition of lease asset		\$1,284,053

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS (continued) Nine Months Ended March 31, 2025

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	\$ 31,848,812
Adjustments to reconcile operating income to net	
cash provided by operating activities	
Depreciation and amortization expense	437,763
(Increase) decrease in:	
Accounts receivable, net	1,089,025
Accrued revenue	31,861,627
Prepaid expenses	32,974,487
Other receivables	(9,586,178)
Deposits	2,184,970
Increase (decrease) in:	
Accrued cost of electricity	(27,660,950)
Accounts payable	(682,195)
Advances from grantors	13,733,326
Other accrued liabilities	490,568
State surcharges payable	59,584
Deposits - energy suppliers	3,044,450
Net cash provided by operating activities	\$ 79,795,289



ACCOUNTANTS' COMPILATION REPORT

Board of Directors San Diego Community Power

Management is responsible for the accompanying operating fund and capital investment program fund budgetary comparison schedules of San Diego Community Power (SDCP), a California Joint Powers Authority, for the nine months ended March 31, 2025 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.

These special purpose statements are 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 May 9, 2025

SAN DIEGO COMMUNITY POWER OPERATING FUND BUDGETARY COMPARISON SCHEDULE

Nine Months Ended March 31, 2025

	Year-to-Date				Annual			
	Amended Budget		Actual	Amended Budget Variance (Under) Over	Actual/ Amended Budget %	Amended Budget		Amended Budget Remaining
REVENUES AND OTHER SOURCES			_					_
Gross Ratepayer Revenues	984,336,553	\$	980,955,404	(3,381,149)	100%	1,243,010,863	\$	262,055,459
Less: Uncollectible Customer Accounts	(17,225,889)	\$	(17,166,720)	59,169	100%	(21,752,690)		(4,585,970)
Other Income	-		1,243,258	1,243,258	na	-		(1,243,258)
Total Revenues and Other Sources	967,110,664		965,031,942	(2,078,722)		1,221,258,173	_	256,226,231
OPERATING EXPENSES								
Cost of Energy	907,455,490		894,737,509	(12,717,981)	99%	1,116,836,549		222,099,040
Professional Services and Consultants	18,259,767		13,764,019	(4,495,748)	75%	24,346,342		10,582,323
Personnel Costs	13,925,916		11,138,341	(2,787,575)	80%	18,567,895		7,429,554
Marketing and Outreach	2,233,956		1,430,291	(803,665)	64%	2,978,593		1,548,302
General & Administrative	3,682,321		2,106,217	(1,576,104)	57%	4,909,761		2,803,544
Total Operating Expenses	945,557,450		923,176,377	(22,381,073)		1,167,639,140		244,462,763
Operating Income (Loss)	21,553,214		41,855,565	20,302,351		53,619,033	_	11,763,468
NON-OPERATING REVENUES (EXPENSES)								
Investment Income	-		9,768,364	9,768,364	na	-		(9,768,364)
Interest and Related Expenses	(957,000)		(1,474,844)	(517,844)	154%	(1,276,000)		198,844
Transfer to Capital Investment Program	(18,175,030)		(18,175,030)	-	100%	(18,175,030)		-
Total Non-Operating Revenues (Expenses)	(19,132,030)		(9,881,510)	9,250,520		(19,451,030)		(9,569,520)
NET CHANGE	\$ 2,421,184	\$	31,974,055	\$ 29,552,871		\$ 34,168,003	\$	2,193,948



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Colin Santulli, Director of Programs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Programs

DATE: May 22, 2025

RECOMMENDATION:

Receive and file update on customer energy programs.

BACKGROUND:

Staff will provide regular updates to the Board of Directors ("Board") regarding the following Community Power customer energy programs: Commercial Programs, Residential Programs, Flexible Load Programs, Solar + Energy Storage Programs, and San Diego Regional Energy Network.

ANALYSIS AND DISCUSSION:

Updates on customer energy programs are detailed below.

Commercial Programs

Commercial Application Assistance Pilot Project

<u>Status and Next Steps:</u> Please refer to <u>Item 3</u> of the April 2025 Board agenda for the most recent update on this pilot project. Staff intend to bring a comprehensive pilot update to the June 2025 Board meeting.

Efficient Refrigeration Pilot Project

<u>Status and Next Steps</u>: Please refer to <u>Item 3</u> of the March 2025 Board agenda for the most recent update on this pilot project.

Residential Programs

California Energy Commission ("CEC") Equitable Building Decarbonization Direct Install ("EBD DI") Program

<u>Status</u>: At the April 2025 meeting, the Board of Directors adopted Resolution No. 2025-03 that authorized staff to execute a Memorandum of Understanding ("MOU") between Community Power and Los Angeles County. The MOU was signed by Community Power and is currently awaiting countersignature from LA County.

Staff are working with the Public Affairs team to activate the Power Network and partner with community-based organizations to conduct marketing, outreach, and educational activities.

<u>Next Steps:</u> Staff will continue to work with LA County and the Southern California Equitable Building Decarbonization Coalition to prepare for the launch of the EBD program, anticipated summer 2025.

Flexible Load Programs

Smart Home Flex Pilot Project

<u>Status and Next Steps:</u> Please refer to <u>Item 3</u> of the April 2025 Board agenda for the most recent update on this pilot project.

EV Flex Connect Pilot Project (formerly Managed Charging Pilot Project)

<u>Status and Next Steps</u>: Please refer to <u>Item 3</u> of the March 2025 Board agenda for the most recent update on this pilot project.

Solar and Energy Storage Programs

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

<u>Status and Next Steps</u>: Please refer to <u>Item 3</u> of the February 2025 Board agenda for the most recent update on this pilot project. Staff intend to bring a comprehensive pilot update to the June 2025 Board meeting.

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

<u>Status and Next Steps</u>: Please refer to <u>Item 2</u> of the December 2023 Board agenda for the most recent update on this program.

Solar Battery Savings ("SBS") Program

<u>Status</u> and <u>Next Steps</u>: Please refer to <u>Item 20</u> of the January 2025 Board staff report for the most recent update on this program.

Solar Advantage Program

<u>Status</u>: An update on the Solar Advantage Program, formerly the Disadvantaged Communities Green Tariff ("DAC-GT"), was provided at the May meeting of the Community Advisory Committee. Following a CPUC decision that modified the Green Access Program, the Community Solar Green Tariff ("CSGT") program was discontinued, and its remaining capacity was transferred to the DAC-GT, now the Solar Advantage Program, resulting in a total capacity of 20.16 MW for Community Power. Staff have secured its first Power Purchase Agreement (PPA) for a 1.7 MW project in Chula Vista and a second Request for Offers (RFO) for additional Solar Advantage Program resources was recently in April 2025.

<u>Next Steps</u>: Staff successfully negotiated a PPA with the additional eligible offer from the first Solar Advantage RFO. Staff are bringing this PPA to the May 2025 Board of Directors meeting for review and approval.

San Diego Regional Energy Network ("SDREN")

SDREN

<u>Status</u>: Staff continue activities required for the successful launch of SDREN programs with a focus on procurement. In December 2024, staff developed a phased schedule to release solicitations for program implementers. The Phase 1 solicitations (administrative, regulatory, and reporting support and cross-cutting sector programs) were released on February 4, 2025, and closed on March 25, 2025. The Phase 2 solicitations (residential and public sector programs) were released on March 6, 2025, and closed on April 24, 2025. The Phase 3 solicitation (commercial sector programs) was released on May 8, 2025, and is planned to close on June 26, 2025.

<u>Next Steps</u>: Staff anticipate awarding contracts for the Phase 1 and Phase 2 solicitations in or before Q3 CY 2025, and the Phase 3 solicitation in Q4 CY 2025.

FISCAL IMPACT:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

TO: Board of Directors

FROM: Kenny Key, Director of Power Contracts

Andrea Torres, Director of Origination

Jennine Camara, Director of Portfolio Management

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Power Services

DATE: May 22, 2025

RECOMMENDATION:

Recommendation to receive and file update on Power Services.

BACKGROUND:

Staff provide the updates below to the Board of Directors regarding Community Power's 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 Community Power 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 Power Services team is now fourteen people strong. The Power Services team has two open positions currently, and is excited to continue stable, prudent growth through 2025.

Administrative Amendment Updates

In May 2025, the CEO signed an administrative amendment to the Sunzia Power Purchase Agreement to allow the developer, Pattern Energy, to operate the turbines at a higher nameplate capacity to facilitate maximum import capacity expansion.

Long-term Renewable Energy Solicitations

As Community Power strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are three renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that

Community Power 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 Community Power can build its power supply portfolio while also providing power supply cost certainty. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in California Public Utilities Commission (CPUC) Decision (D.) 21-06-025, the 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 CPUC D.23-02-040.

In pursuit of long-term contracts for renewable energy and storage, over the past 24 months, staff have released several Requests for Offers (RFOs) and Requests for Proposals (RFPs). Staff issued an "All-Source RFO" in September 2024 with an emphasis on clean, firm resources to meet MTR requirements and enhance the Community Power portfolio. Staff shortlisted and waitlisted projects in December 2024 using Community Power's Energy Project Evaluation Criteria and has since kicked off negotiations. Staff issued an RFO targeted for clean-firm resources (e.g. geothermal, bioenergy potential) in April to help achieve MTR requirements and increase technology diversity in Community Power's portfolio

Staff remain in negotiations for additional resources that are expected to be online between 2026 and 2029. Staff and the Energy Contracts Working Group (ECWG) evaluate all submissions from solicitations prior to entering negotiations with selected participants. Assuming that staff and shortlisted developer(s) can agree to mutually agreeable contracts consistent with terms authorized by the ECWG, staff then review draft terms with the Community Power Board for approval and authorization to execute the relevant documents.

Local Development

Community Power's rolling Local RFI remains open and has yielded eight Board-approved contracts for local generation and storage facilities. After consultation with the ECWG, Community Power Board of Directors has approved a portfolio of PV PPAs and energy storage and service agreements and is actively negotiating with several local projects submitted to the Local RFI in Q4 2024. Community Power also released an RFO for distributed renewable energy resources (DERs), focusing on a broad range of distribution-level renewable projects within San Diego County. Additional agreements resulting from the RFO are expected and will be presented to the Board when ready. Other ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected in the first half of this year, and continued collaboration with member agency staff and other local agencies to identify strategic opportunities to further infill development.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) program, Community Power completed its first solicitation last year. The first DAC-GT PPA, with Luminia LLC, a local developer, was presented to and approved by

the Board in January with a second portfolio of projects being presented at May's Board meeting. The second DAC-GT solicitation round was released on April 7th and will be accepting offers through September 8th.

Community Power'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

Community Power staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. Community Power has recently been evaluating solicitation offers, bilateral offers, and products that meet needs for multiple portfolios – creating greater value for its customers. Community Power will continue to prioritize environmental targets while also ensuring value for our customers.

Market Update

Due to limited resource availability in the broader Western Interconnection, lingering supply chain impacts and long interconnection queues that have delayed development of new-build energy resources, and implementation of tariffs and duties on foreign imports, the market for renewable energy and resource adequacy (RA) continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to i) develop near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources to meet Community Power 's portfolio needs practically and cost-effectively, and ii) to establish a portfolio of resources that will provide value to Community Power and California's clean, reliable energy needs into the future.

Near-term California power markets have been on a slight decline due to relatively mild weather and light heating demand but remain sensitive to extreme temperatures and unexpected supply shortages.

•	,	J		
FISCAL IM	PACT:			
N/A				
ATTACHM	ENTS:			

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Lucas Utouh, Senior Director of Data Analytics and Customer

Operations

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Customer Operations

DATE: May 22, 2025

RECOMMENDATION:

Receive and file an update on various customer operations' initiatives.

BACKGROUND:

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

ANALYSIS AND DISCUSSION:

A) Enrollment Update

As of April 21, 2025, Community Power is serving a cumulative total count of **956,724** active accounts.

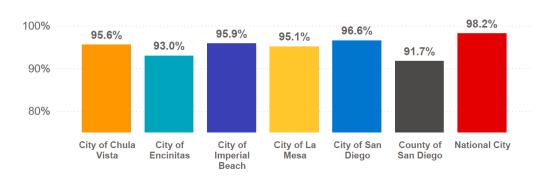
Customers with newly established accounts or who have moved into a new service address within any and all of our member jurisdictions receive two post-enrollment notices through the mail at their mailing address on file within 60 days of their account start date to notify them that they have defaulted to Community Power electric generation service.

B) Customer Participation Tracking

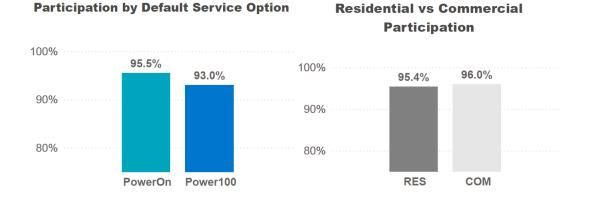
The below charts summarize customer elections into San Diego Community Power's four (4) available service levels:

Enrolled	Participation	
Accounts	Rate	Participation
956 724	95.4%	-

Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,640	94,268	95.6%
City of Encinitas	Power100	28,827	26,809	93.0%
City of Imperial Beach	PowerOn	10,835	10,387	95.9%
City of La Mesa	PowerOn	29,496	28,062	95.1%
City of San Diego	PowerOn	624,957	603,396	96.6%
County of San Diego	PowerOn	190,538	174,698	91.7%
National City	PowerOn	19,451	19,104	98.2%
Total		1,002,744	956,724	95.4%

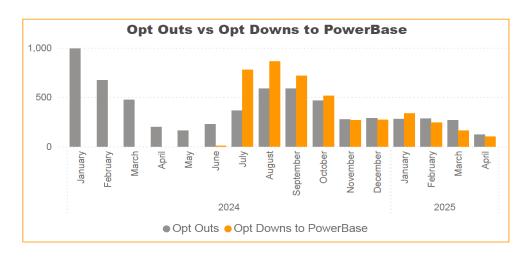


Service Option

PowerBase	PowerOn	Power100	Power100 Green+		
Enrolled 3,880 Participation 0.4%	Enrolled 918,597 Participation 96.0%	Enrolled 34,246 Participation 3.6%	Enrolled 1 Participation 0.0%		

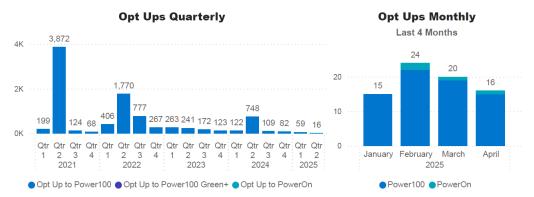
Service Option Enrollment Summary

Jurisdiction	Service Option Default	Enrolled Accounts	Power Base Enrolled	Power Base %	PowerOn Enrolled	PowerOn %	Power 100 Enrolled	Power 100 %	Power100 Green+ Enrolled	Power100 Green+ %
City of Chula Vista	PowerOn	94,268	370	0.4%	92,988	98.6%	910	1.0%		
City of Encinitas	Power100	26,809	145	0.5%	422	1.6%	26,242	97.9%		
City of Imperial Beach	PowerOn	10,387	29	0.3%	10,281	99.0%	77	0.7%		
City of La Mesa	PowerOn	28,062	116	0.4%	27,680	98.6%	266	0.9%		
City of San Diego	PowerOn	603,396	2,046	0.3%	595,422	98.7%	5,927	1.0%	1	0.0%
County of San Diego	PowerOn	174,698	1,132	0.6%	172,774	98.9%	792	0.5%		
National City	PowerOn	19,104	42	0.2%	19,030	99.6%	32	0.2%		
Total		956,724	3,880	0.4%	918,597	96.0%	34,246	3.6%	1	0.0%



Opt Up History





Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista	710	175	61	49	5	4	1,004
City of Encinitas	18	1	1	3			23
City of Imperial Beach	60	29	11	6			106
City of La Mesa	155	120	19	12	2		308
City of National City			12	24			36
City of San Diego	3,316	2,895	488	340	42	12	7,093
County of San Diego	4		207	627	10		848
Total	4,263	3,220	799	1,061	59	16	9,418

Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	4,256	296	232	701	15	10	5,510
Residential	7	2,924	567	360	44	6	3,908
Total	4,263	3,220	799	1,061	59	16	9,418

Opt Ups by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	4,232	1,372	301	817	24	14	6,760
IVR	4	85	84	42	4		219
Web	27	1,763	414	202	31	2	2,439
Total	4,263	3,220	799	1,061	59	16	9,418

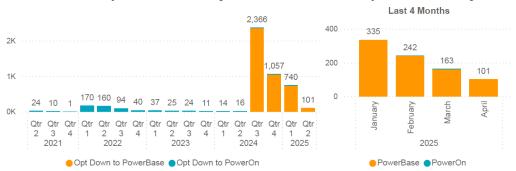
^{*}Current indicates the account is open with SDG&E and this opt action is their latest opt action

Opt Down History



Opt Downs Quarterly

Opt Downs Monthly



Opt Downs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista		2	4	287	108	7	408
City of Encinitas	35	429	74	150	28	7	723
City of Imperial Beach		1		31	4		36
City of La Mesa		4		106	16	3	129
City of National City				36	11	1	48
City of San Diego		28	13	1,792	401	60	2,294
County of San Diego			6	1,051	172	23	1,252
Total	35	464	97	3,453	740	101	4,890

Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	34	23	9	508	47	6	627
Residential	1	441	88	2,945	693	95	4,263
Total	35	464	97	3,453	740	101	4,890

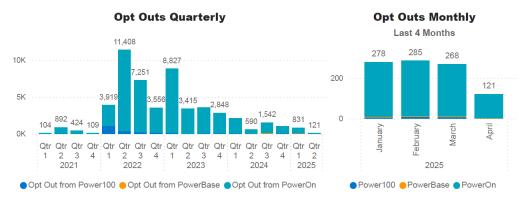
Opt Downs by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	31	311	65	2,560	497	59	3,523
IVR	4	26	3	309	82	17	441
Web		127	29	584	161	25	926
Total	35	464	97	3,453	740	101	4,890

 $^{^{\}star}\text{Current}$ indicates the account is open with SDG&E and this opt action is their latest opt action

Opt Out History





Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	Total
City of Chula Vista	267	3,466	747	412	72	7	4,971
City of Encinitas	66	1,870	230	118	26	1	2,311
City of Imperial Beach	32	343	99	60	5	2	541
City of La Mesa	84	1,269	235	128	26	2	1,744
City of National City			285	75	20	2	382
City of San Diego	1,078	19,185	3,185	1,836	346	54	25,684
County of San Diego	2	1	13,902	2,670	336	53	16,964
Total	1,529	26,134	18,683	5,299	831	121	52,597

Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	Total
Commercial	1,492	535	1,686	345	53	7	4,118
Residential	37	25,599	16,997	4,954	778	114	48,479
Total	1,529	26,134	18,683	5,299	831	121	52,597

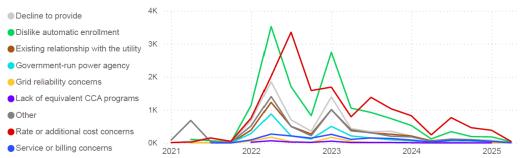
Opt Outs by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	Total
CSR	1,104	6,962	4,706	1,653	274	31	14,730
IVR	102	4,886	3,789	1,284	140	25	10,226
Web	323	14,286	10,188	2,362	417	65	27,641
Total	1,529	26,134	18,683	5,299	831	121	52,597

 $^{^{\}star}$ Current indicates the account is open with SDG&E and this opt action is their latest opt action

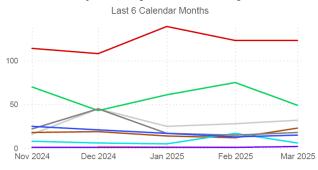
Opt Out Reason Summary

Opt Outs by Reason Quarterly



Opt Outs by Reason Monthly

Opt Out Reason Distribution



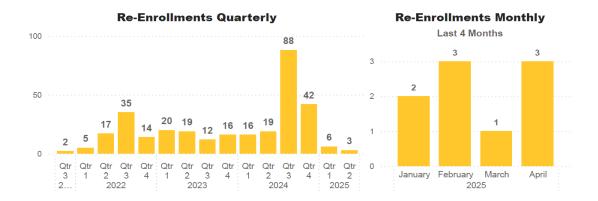


Opt Outs by Reason Table

Opt Out Reason	2021	2022	2023	2024	2025 Q1	2025-4	Total
Decline to provide	228	3,583	2,519	465	85	14	6,894
Dislike automatic enrollment	203	7,187	5,458	1,188	185	40	14,261
Existing relationship with the utility	2	2,389	1,968	462	49	3	4,873
Government-run power agency	24	1,491	961	129	28		2,633
Grid reliability concerns	7	293	252	20	1	1	574
Lack of equivalent CCA programs		131	90	12	3		236
Other	819	2,636	1,884	453	50	14	5,856
Rate or additional cost concerns	240	7,706	4,897	2,297	385	45	15,570
Service or billing concerns	6	718	654	273	45	4	1,700
Total	1,529	26,134	18,683	5,299	831	121	52,597

Re-Enrollment Requests

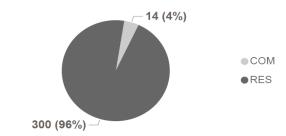
Excludes closed accounts



Re-Enrollments by Jurisdiction

Jurisdiction	Accounts
City of Chula Vista	23
City of Encinitas	25
City of Imperial Beach	4
City of La Mesa	6
City of National City	1
City of San Diego	191
County of San Diego	64
Total	314

Re-Enrollments Residential vs Commercial



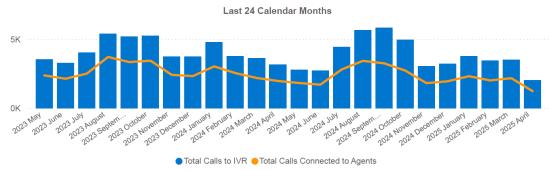
D) Contact Center Metrics

As anticipated, call volumes have continued to decrease as a result of the temperate weather and lower winter electricity rates.

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

Contact Center Metrics

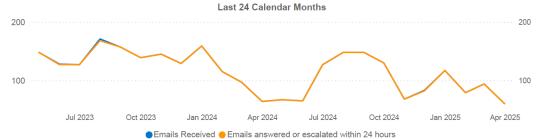




Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023	2024	2025 Q1	2025-4	Total
Total Calls to IVR	2,289	47,118	52,977	48,073	10,767	2,022	163,246
Total Calls Connected to Agents	1,401	30,174	34,173	29,332	6,528	1,241	102,849
Avg Seconds to Answer	20.00	11.50	6.75	18.08	15.00	5.00	13.59
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.6	8.7	7.4	9.3
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	91.74%	92.01%	98.71%	95.07%
Abandon Rate	0.57%	0.36%	0.19%	0.72%	0.88%	0.24%	0.47%

Customer Service Email Volume Trends



Customer Service Emails

	2021	2022	2023	2024	2025 Q1	2025-4	Total
Emails Received	272	2,894	2,116	1,271	290	60	6,903
Emails answered or escalated within 24 hours	257	2,821	2,107	1,270	290	60	6,805
Completion %	94%	96%	100%	100%	100%	100%	98%

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

As of this latest reporting month, Community Power has 10 Dedicated Customer Service Representatives staffed at the Contact Center and 1 Supervisor. Robust Quality Assurance (QA) procedures are firmly in place to ensure that customers are getting a world-class customer experience when they contact Community Power.

FISCAL IMPACT:	
N/A	
ATTACHMENTS:	

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 6

TO: Board of Directors

FROM: Chandra Pugh, Sr. Director of People Operations and Administration

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Human Resources Update

DATE: May 22, 2025

RECOMMENDATION:

Receive and file update on Human Resources.

BACKGROUND:

We are actively recruiting for the following roles:

Chief Commercial Officer Data Analyst Sr. Rates Analyst

This month we welcome our new Procurement Analyst, Krystal Carranza.

In her role, Krystal will support Community Power's non-energy procurement and contracting efforts, ensuring that our non-energy procurement and contracting function continues to scale with the agency's needs.

Krystal comes to Community Power with extensive experience in procurement and contracting. She has worked at the San Diego Association of Governments (SANDAG) and the Port of San Diego, where she provided guidance on procurement methods, coordinated with project managers to develop and manage solicitations, and facilitated the timely completion of contracts. She also has experience providing procurement training and conducting audits.

HR is assisting with the administration of the performance evaluation and contract review process for CEO, Karin Burns and General Counsel, Veera Tyagi. This process includes self-review, peer review and Board member feedback. Survey results will be provided in aggregate to Chair Aguirre for review during today's closed session.

ANALYSIS AND DISCUSSION:
N/A
FISCAL IMPACT:
N/A
ATTACHMENTS:
N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 7

TO: **Board of Directors**

FROM: **Jack Clark, Chief Operating Officer**

Jen Lebron, Senior Director of Public Affairs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Marketing, Public Relations, and Local Government Affairs

DATE: May 22, 2025

RECOMMENDATION:

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

BACKGROUND:

Community Power 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:

Community Power'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

Las Palmas Senior Food Distribution Transportation Justice Expo Olivewood Gardens Clean Energy Project Fundraiser Intertribal Earth Day Startup San Diego First Mondays Chula Vista Community Collaborative National City Collaborative Sunset Sweet: Manzanita Canyon Cleanup New Children's Museum Innovators LAB Grand Opening

South Bay Earth Day

Taste of City Heights

City of San Diego Climate Equity Working Group

San Diego Regional Climate Collaborative

County of San Diego Earth Day Fair

Imperial Beach Collaborative

La Mesa Earth Day

Sony Electronics Earth Day

Nature Day at El Toyon Elementary

Roots & Renewal: The Environmental Health Coalition's 45th Anniversary

Spring Valley Day

Ramona Earth Day Festival

South County Economic Development Corporation Economic Summit

Chicano Federation Annual Unity Luncheon

Infocast California Energy Transition Summit

San Diego Regional Chamber of Commerce Small Business Summit

San Diego Regional Economic Development Corporation Annual Dinner

Discover Fallbrook Community Expo

Cyclovia Encinitas

North San Diego County Business Chamber

Equality California San Diego Equality Awards

EcoFest Encinitas

Connect San Diego Summer Social

Chula Vista Chamber of Commerce Installation Dinner

San Diego Regional Chamber Congressional Luncheon

Suncoast Imperial Beach Farmers Market

Sustainable Solutions Fair

San Diego Padres

Imperial Beach Chamber of Commerce

Marketing, Communications and Outreach

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts, including the launch of the San Diego Regional Energy Network and relaunch of the Solar Battery Savings program. It is also ramping up efforts to promote pilot 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.

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

The Public Affairs team will continue to develop new strategies, processes and capacity over the next several months to conduct more community outreach, expand marketing

and brand awareness efforts, and provide timely, accurate information across multiple channels.

Local Government Affairs

Community Power continues to meet with and work with local governments and tribal nations throughout the greater San Diego region. It has made a concerted effort to reach out to newly elected officials in all seven member agencies to provide education about the organization.

FISCAL	IMPACT:

N/A

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 8

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Laura Fernandez, Senior Director of Regulatory and Legislative Affairs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Regulatory and Legislative Affairs

DATE: May 22, 2025

RECOMMENDATION:

Receive and file the update on regulatory and legislative affairs.

BACKGROUND:

Staff provides regular updates to the Board regarding Community Power's regulatory and legislative engagement

ANALYSIS AND DISCUSSION:

A) Regulatory Updates

Power Charge Indifference Adjustment

On April 8, 2025, the Assigned Commissioner for the new <u>order instituting rulemaking</u> (OIR) on the Power Charge Indifference Adjustment (PCIA) and other matters related to the Energy Resource Recovery Account (ERRA) annual forecast and compliance proceedings issued a <u>Scoping Memo and Ruling</u>. The Scoping Memo confirmed a narrow scope for Track 1: consideration of adjustments to the Resource Adequacy (RA) Market Price Benchmark (MPB) methodology and data. On April 21, 2025, Community Power's trade association, the California Community Choice Association (CalCCA) filed <u>Opening Briefs</u> primarily arguing that the CPUC should only apply a modified RA MPB prospectively and that applying a modified methodology to the 2025 rate true-up would constitute retroactive ratemaking, which is prohibited. CalCCA filed <u>Reply Briefs</u> on April 30 and a proposed decision on Track One issues is expected in late May 2025.

Integrated Resource Planning

On April 29, 2025, the CPUC issued a Ruling requesting comment on the Reliable and Clean Power Procurement Program (RCPP) Staff Proposal within the Integrated Resource Planning Proceeding. The goal of RCPPP is to give load serving entities (LSE) a more predictable regulatory framework to procure their share of the resources needed to meet electric system reliability and greenhouse gas (GHG) emission reduction goals at least cost.

The Staff Proposal is divided into two main parts: a proposal for reliability purposes and a proposal for GHG reduction purposes. Each of the two main parts address the key elements noted in the Figure below.

Figure 2. Key Design Elements of RCPPP

Need **Need Allocation** Compliance **Enforcement Determination** • The use of Specifying what LSE data filing Financial penalties technical analysis to quantity of the to address an LSE's requirements and specify the needed required resource resource counting failure to meet its attributes each LSE quantities of metrics that allow procurement resource attributes, should be required for monitoring of obligations. such as effective to provide, compliance with capacity, firm considering factors procurement energy, and/or clean such as load obligations. energy attributes, migration and each over a specified LSE's existing period. portfolio of owned and/or contracted resources.

Commission staff will hold a workshop to present the Staff Proposal and answer parties' questions on May 16. Comments are due June 5 and reply comments are due June 26, 2025.

Renewables Portfolio Standard

On April 17, 2025, the Assigned Commissioner issued a Ruling on the content and schedule for 2025 Renewables Portfolio Standard (RPS) Procurement Plans.

- Draft RPS Plans are due June 30
- Comments on Draft RPS Plans are due July 28 and reply comments are due August 11
- Motions to update Draft RPS Plans are due August 11
- A Proposed Decision is expected in Q4 2025
- Final RPS Plans will be due 30 days after a Final Decision is issued.

The required 2025 RPS Plan format includes significant revisions in the form of clarifications to RPS Plan requirements and reorganization of some RPS Plan sections. As part of the new Compliance Period that starts in 2025, the 2025 RPS Plan filings should inform the Commission of the retail seller's activities and plans to procure 65% of RPS resources from long-term contracts of 10 or more years for all compliance periods beginning with the current compliance period.

CPUC Energy Division staff will hold a webinar to discuss questions from retail sellers related to the templates and 2025 RPS Plans' requirements no later than June 9, 2025.

Green Access Proceeding

On April 28, 2025, Community Power jointly filed <u>opening comments</u> with six other CCAs in response to the CPUC <u>Ruling</u>, which asked for party input on questions regarding implementation and associated issues for a Community Renewable Energy (CRE) Program and the modified Green Tariff Program established by Decision 24-05-065. The Joint CCAs offered proposals on how to align the CRE program with requirements for receiving the \$250 million in grant funds awarded to the State of California through the U.S. Environmental Protection Agency's (EPA) Solar for All competition. The Joint CCAs also included details on their proposed tariff structure for the CRE program.

Community Power also filed <u>comments</u> jointly with Clean Energy Alliance (CEA) to respond to a specific question regarding cost recovery of under-collected legacy costs from San Diego Gas & Electric's (SDG&E) Green Tariff program. Community Power, CEA, and SDG&E all agreed that this issue should be resolved in SDG&E's 2023 Energy Resource Recovery Account (ERRA) Compliance Case, which is already included in the scope. Reply Comments are due May 8, 2025.

SDG&E's Cost of Capital Application

SDG&E filed its Cost of Capital Application requesting that the CPUC approve its proposed cost of capital for Test Year 2026 for cost of equity and cost of long-term (LT) debt. SDG&E proposes an overall weighted average cost of capital/return on rate base of 8.21%. SDG&E's proposal would increase its overall rate of return by 0.76% and its annual revenue requirement by \$96.45 million.

The CPUC adopted a uniform cost of capital mechanism (CCM) for PG&E, SCE, and SDG&E in D.08-05-035, which established the 3-year cost of capital proceeding cycle and provided two mechanisms for cost of capital adjustments during interim years: Formula Adjustment Mechanism, which operates based on changes in market interest rates relative to a benchmark; and an application process based on extraordinary or catastrophic events.

Responses to the application were filed on April 24 by multiple stakeholders, including ratepayer advocates, environmental groups, and consumer advocates highlighting the following deficiencies in SDG&E's proposal:

- SDG&E proposes an unjustified wildfire premium based on an overstatement and already adequately mitigated risk through existing state protections and ratepayer investments;
- SDG&E's requested return on equity significantly exceeds industry norms and unfairly increases customer burden;
- SDG&E's financial and economic analysis are inconsistent and rely on outdated methodologies, unrealistic growth assumptions, and market biases, failing to reflect realistic investor expectations;
- SDG&E relies on zero-cost capital (deferred taxes, depreciation/amortization), provided annually by ratepayers, significantly reducing the utilities need for capital and undermining its case for increased investor returns;
- SDG&E's proposal is unnecessary, unreasonable and does not fully take into account the escalating affordability crisis faced by California ratepayers

SDG&E Energy Resource Recovery Account (ERRA) Compliance

The purpose of the ERRA Compliance proceeding is to review SDG&E's actual energy procurement performance in the previous year against their approved forecast for that year. Any difference between the forecasted costs and the actual costs is tracked in a balancing account. This mechanism ensures that customers ultimately pay for the actual costs incurred by SDG&E.

SDG&E 2023 ERRA Compliance Case

SDG&E held a "meet and confer" with intervening parties and it was agreed upon based on the record that evidentiary hearings would not be necessary and that the proceeding could be resolved by the CPUC based on the record. As such, the Administrative Law Judge cancelled evidentiary hearings. Opening Briefs were submitted on April 18 by San Diego Community Power/Clean Energy Alliance and SDG&E. The Community Power and Clean Energy Alliance brief argued that the CPUC should require SDG&E to recover Green Tariff program under collections from former program participants or SDG&E shareholders, and that corrections should be made to distribution-related battery accounting. SDG&E's brief argues that the CPUC should find that their fuel and purchased power expenses complied with SDG&E's Commission-approved procurement plan and were recorded accurately. Reply briefs are due May 9, 2025. A Proposed Decision is expected in the third quarter of 2025.

Self-Generation Incentive Program (SGIP)

On April 28, the CPUC issued a <u>ruling</u> describing the process for the close-out of the SGIP program and requesting party comment on the process. Comments are due May 12 and Reply comments are due May 19. The ruling addresses both the ratepayer funded portion of the program and the portion of the program funded by the Greenhouse Gas Reduction Fund (GGRF). The ruling poses questions related to implementation of the program and

procedural process for closing out the program. The ruling also provides a draft proposal for the final program Measurement and Evaluation plan.

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

On September 26, 2024, the California Public Utilities Commission (CPUC or Commission) issued an <u>Order Instituting Rulemaking</u> (OIR) to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Long-Term Gas System Planning (Long Term Gas Planning proceeding). A key purpose of the proceeding is to plan for the transition from gas to decarbonized energy sources. Community Power is currently participating in this proceeding via a Joint CCA group (as opposed to the California Community Choice Association, CalCCA).

On November 13, 2024, the CPUC issued a *Ruling Seeking Comments Regarding Interim Actions* to decarbonize before the Commission. In <u>comments</u>, the Joint CCAs recommend leveraging General Rate Case (GRC) and Energy Resources Recovery Account (ERRA) proceedings for transparency in gas system costs and urge utilities to share detailed data on gas distribution infrastructure changes in CCA service areas. The Joint CCAs encourage the Commission to focus on retiring most fossil fuel infrastructure, suggesting the use of securitization to manage costs, and advocate for incorporating California Energy Commission (CEC) demand forecasts into planning. Additionally, the Joint CCAs propose requiring demand forecast tables in GRC proceedings and evaluating non-pipeline alternatives to uphold a comprehensive approach to utilities' service obligations. Reply Comments were filed on April 1, 2025. The Joint CCAs did not file reply comments.

On March 11, 2025, parties filed Opening Comments in the CPUC's Natural Gas Planning proceeding on the Natural Gas System Mapping procedures outlined in Appendix A of the recently issued Assigned Commissioner's Ruling on Senate Bill 1221 Mapping Staff Proposal and Directions to Utilities (Ruling). In short, Senate Bill 1221 requires mapping of current gas infrastructure data that will ultimately help identify pilot decarbonization zones. In Opening Comments, Joint CCAs argued that interactive maps should be updated semi-annually and integrate data from electrification efforts to align with state climate goals. The Joint CCAs recommend coordination among utilities and local governments to manage electric circuit impacts and advocate for a standardized methodology to prioritize pipeline replacements, reducing gas dependency. Additionally, the Joint CCAs say that IOUs should collaborate with communities and governments to refine mapping accuracy, incorporating feedback through regular public workshops.

On March 18, the Joint CCAs filed Reply Comments expressing agreement with the staff proposal and stakeholders' expressed need for data beyond the "planned retirement" of gas infrastructure. The Joint CCAs support Cal Advocates (a.k.a. Public Advocates Office) that the CPUC should require the inclusion of leak data in gas system mapping and endorse the staff proposal's method for providing detailed, current data. The Joint CCAs also advocate for explicit access to this data for Local Energy Suppliers, including CCAs. However, the Joint CCAs refute the gas utilities' claim that sharing the data is unsafe.

Building Decarbonization

On March 26, 2025, the CPUC issued <u>Phase 4 Track A [Proposed] Decision Establishing New Electric Service Line Upsizing Rules, Modifying Electric Line Extension Rules and Reporting Requirements, and Implementing Assembly Bill 157.</u> This proposed decision approves \$5M in funding annually through 2029 to cover service line upsizing costs for "under-resourced" customers pursuing full electrification of their home or business, with allocations across IOU service areas as follows:

Proportional Annual Allocation Amounts for Electric Utilities to Establish Common Facility Cost Treatment Balancing Accounts July 1, 2025 through December 31, 2029

Utility Name	Number of Residential Accounts	Number of Small Business Accounts	Funding Percentage	Funding Amount
Bear Valley Electric Service	23,097	1,328	0.20%	\$9,827.50
Liberty Utilities	44,087	5,321	0.40%	\$19,880.00
PacifiCorp	36,427	8,218	0.36%	\$17,963.50
Pacific Gas and Electric Company	5,171,416	480,629	45.48%	\$2,274,168.00
Southern California Edison Company	4,621,605	538,525	41.52%	\$2,076,240.00
San Diego Gas & Electric Company	1,371,321	124,648	12.04%	\$601,921.00
TOTAL	11,267,953	1,158,669	100.00%	\$5,000,000.00

Customers must be enrolled in an electrification program to qualify, and the definition of "under-resourced" is deferred to the program administrator (e.g., Regional Energy Network (REN), community choice aggregator (CCA), investor-owned utility (IOU), etc.) managing the program in which the customer is enrolled. Specifically, the definition is based on "need-based eligibility criteria established by the applicable program(s) through which the customer will receive incentives towards electrification measures" (Proposed Decision at page 16).

Parties filed opening comments on April 15, 2025. In opening comments, Sierra Club, California Environmental Justice Alliance, and Natural Resources Defense Council (together, the Joint Parties) encouraged the CPUC to increase the budget to \$10M in total, reserving half of the budget for under-resourced residential customers and small businesses in disadvantaged communities (DACs), with the other half being accessible to customers of all income levels. On April 21, 2025, Community Power, on behalf of San

Diego REN (SDREN), filed <u>reply comments</u> with Northern Rural Energy Network (together, the Joint RENs). The Joint RENs encourage the CPUC to maintain the eligibility constraints as described in the proposed decision, stating deferral to program administrators for the definition of "under-resourced" is prudent, as it will maximize reach to customers least able to electrify and will also ensure definitions are appropriately tailored to local communities. Adopting the Joint Parties' suggestion to narrow the definition of "under-resourced" to customers living in DACs would greatly limit the number of REN customers that can access funding.

The soonest the Commission will vote on this proposed decision is May 15, 2025.

Energy Efficiency

On April 24, 2025, the CPUC approved a new Order Instituting Rulemaking (OIR) for Oversight of Energy Efficiency Portfolios, Policies, Programs, and Evaluation.

The proceeding names the large IOUs, all Regional Energy Networks (including San Diego Regional Energy Network), and MCE as respondents which grants party status.

The OIR is the primary forum for addressing policy and implementation issues related to CPUC-jurisdictional market-rate energy efficiency programs. The scope emphasizes cost-effectiveness and affordability, in line with the Governor's Executive Order N-5-24.

Key Policy Issues:

- Natural Gas & Electric Alternatives: Staff will propose guidance in Q2 2025 on viable electric alternatives to gas.
- CCA Oversight: Updates to the budget formula and oversight of CCA elect-to-administer portfolios are expected, with a staff proposal in Q4 2025.
- 2026 Portfolio Applications: All administrators must file 2026 applications for portfolios spanning 2028-2031; guidance is forthcoming.
- Portfolio Oversight: The CPUC will align oversight practices with <u>State Auditor</u> recommendations.
- Multifamily Programs: A workshop in Q3 2025 will address this sector's unique needs.
- Other Topics: Potential updates to third-party solicitation, Regional Energy Network (REN) oversight, statewide program rollout, financing, cost-effectiveness metrics, and Aliso Canyon closure efforts.

Key Implementation Issues:

 Potential & Goals Study: A study released on May 1st will inform portfolio planning and IOU energy savings goals; it is scheduled for Commission adoption by August.

- Oversight of 2024–2027 Portfolio Plans
- Other Topics: Oversight of market transformation, demand-side integration, program evaluation, and database improvements will also be addressed as needed.

Opening comments are due on May 19th and reply comments are due on May 29th.

B) State Legislative Activities Update

Update on Legislation Supported by Community Power

The Legislature's house of origin policy committee deadline is May 16, meaning each bill must have received a committee hearing for it to move forward in the legislative process. Here is an update on bills that Community Power is supporting:

- <u>AB 259 (Rubio)</u>: This would extend teleconferencing procedures under the Brown Act. It was approved by the Assembly Committee on Local Government.
- SB 239 (Arreguin): This would simplify teleconferencing procedures for subsidiary bodies like the Community Advisory Committee. It was approved by the Senate Committee on Local Government.
- <u>SB 302 (Padilla)</u>: This would align California tax law, so it treats transferable clean energy tax credits in a manner that is consistent with federal law. It was approved by the Senate Committee on Revenue & Taxation and subsequently placed on the Senate Committee on Appropriations Suspense File.
- <u>SB 330 (Padilla)</u>: This would set up a process for the Governor to establish a public financing mechanism for transmission projects. It passed the Senate Committee on Energy, Utilities and Communications and the Senate Committee on Environmental Quality.
- SB 540 (Becker): This would allow the California Independent System Operator (CAISO) to participate in an independent regional electricity market. It was approved by the Senate Committee on Energy, Utilities and Communications and the Senate Committee on Judiciary. The bill was significantly amended by the Senate Committee on Judiciary in a manner that expands the requirements that must be met for the CAISO to participate in an independent regional electricity market. Community Power staff are reviewing the amendments.
- <u>SB 740 (Blakespear)</u>: This would extend the sunset on a property tax exclusion for solar and storage systems. It is set for a hearing in the Senate Committee on Revenue & Taxation on May 14.

Energy Storage Safety Legislation

Community Power is monitoring six bills that pertain to safety standards for energy storage. The bills are:

• <u>SB 283 (Laird)</u>: This would require fire department consultation and inspection of energy storage systems and would require that those systems meet a fire code

standard, known as NFPA 855. It would further stipulate that energy storage systems could only be approved if they are in noncombustible, dedicated-use buildings. It was approved by the Senate Committee on Energy, Utilities, and Communications.

- AB 303 (Addis): This would prohibit the approval of battery storage energy storage
 projects within 3,200 feet of sensitive receptors and environmentally sensitive
 sites. It would also disallow battery energy storage systems from being eligible for
 a state-level opt-in permitting process. A hearing was postponed by the Assembly
 Committee on Utilities & Energy, and it is not expected to advance past the house
 of origin deadline.
- AB 434 (DeMaio): This would impose a 2-year moratorium on battery energy storage facilities while the State Fire Marshal adopts guidelines and minimum standards. It was referred to the Assembly Committee on Utilities & Energy, but has not been set for a hearing. It is not expected to advance past the house of origin deadline.
- AB 588 (Patel): This would create a working group to recommend potential solutions to enhance building safety with respect to lithium batteries. It was approved by the Assembly Committee on Emergency Management.
- <u>AB 841 (Patel)</u>: This would create a working group to develop recommendations about personal protective equipment used by firefighters when responding to lithium-ion batteries. The bill was approved by the Assembly Committee on Labor and Employment.
- AB 1285 (Committee on Emergency Management): This would require the State
 Fire Marshal to develop fire prevention response, and recovery measures for utility
 grade lithium-ion battery storage facilities. It was approved by the Assembly
 Committee on Emergency Management.

Update on Legislative Focus on Ratepayer Affordability

Both the Senate Committee on Energy, Utilities and Communications and the Assembly Committee on Utilities & Energy previously held oversight hearings (Senate hearing materials can be found here and Assembly hearing materials can be found here) on matters related to ratepayer affordability. New legislation from Senator Becker, the chair of the Senate Committee on Energy, Utilities, and Communications, is an outcome of the legislative affordability conversations. He recently introduced SB 254 (Becker) to put forward various affordability proposals. In summary, the bill addresses the following:

- Public financing of transmission powerlines. Creates the Clean Energy Infrastructure Authority to develop transmission and other infrastructure. The Authority, which is exempt from California Public Utilities Commission (CPUC) oversight, can "finance, plan, develop, acquire, own, maintain, sell, or operate eligible clean energy infrastructure (including transmission and storage) necessary or useful" in the state's transition to 100% clean energy. It includes public financing of transmission that would be operated and maintained by the IOUs.
- Modifies oversight of IOU wildfire mitigation. Overhauls the framework for the oversight of IOU wildfire mitigation project review, introduces the need to evaluate

- wildfire investments based on cost efficiency, and exempts undergrounding from the California Environmental Quality Act (CEQA).
- Restricts earning a rate of return on certain investments. Prevents the IOUs from including in their rate base their proportional share of \$5 billion of fire risk mitigation capital expenditures and \$10 billion of energization capital expenditures approved by the CPUC on or after January 1, 2025.
- Enhances a bi-annual bill credit. Increases the California Climate Credit for customers on low income rates and concentrates the credit on peak bill months.
- Seeks to fund certain societal programs with state revenues. Establishes the Policy-Oriented and Wildfire Electric Reimbursement (POWER) program that will use appropriated funds, if any, to reimburse CPUC programs "driven by public policy goals, that provide benefit to the general public and not just to ratepayers, and that are not required for the safe and reliable delivery of electricity to the ratepayers...." (e.g. transportation electrification, building decarbonization, energy efficiency, low-income discounts, and wildfire mitigation). This does not change the ratepayer funding source for programs, such as those that will be offered by the San Diego Regional Energy Network. Rather, the bill creates a ratepayer reimbursement mechanism should the state be able to appropriate funds.
- Clarifies reporting requirements on demand-side management programs. Modifies
 the CPUC's reporting responsibility for demand-side management programs it
 oversees or that are paid for by ratepayers of the IOUs or CCAs by specifying that
 "public interest impacts" include nonenergy effects, emissions reductions, or equity
 considerations.
- Changes the general rate case process. Heightens the burden of proof for proposed IOU costs in excess of inflation to "clear and convincing" evidence and increases reporting requirements for the CPUC if such costs are authorized.
- Sets up programmatic environmental review for certain projects. Requires the California Energy Commission (CEC) to prepare a program environmental impact report (EIR) to analyze the development of classes of facilities, including solar, wind, energy storage, and thermal generation so that other agencies considering approval of specific facilities within the class may rely and build on the program EIR rather than doing their own. It also broadens the scope of energy projects that fall within the exclusive jurisdiction of the CEC for permitting by reducing the capital investment requirement for discretionary projects from \$250 million to \$100 million and extends eligibility to come within the CEC's jurisdiction from mid-2029 to mid-2034. The bill also makes other material changes to the certification process.

Community Power's initial review of the legislation indicates that the bill would not have an impact on Community Power's procurement or rate setting. The core impact of the bill appears to be primarily on IOU delivery-related costs and oversight thereof. The California Community Choice Association is supporting the bill.

C) Federal Activities Update

Community Power staff continue to monitor and engage in Congressional and executive matters.

White House Office of Management and Budget (OMB) Releases Discretionary Budget Request

Prior staff reports indicated there will likely be congressional action through the budget reconciliation process on energy tax credit matters. Related, on May 2 the White House OMB released their discretionary budget proposal. The proposal focuses on disbursements of appropriated funds and does not deal with energy tax credit issues. It does include proposals to rein in spending on what OMB labels as the "Green New Scam." The OMB proposal seeks to end the U.S. Environmental Protection Agency's Justice40 program, and to claw back energy related funds from the Infrastructure Investment and Jobs Act (IIJA). Community Power is not in receipt of any IIJA funds.

Thirty-eight Members of the House Majority Party Call for Ending Inflation Reduction Act (IRA) Energy Tax Credits

The 38 members of Congress sent a letter to Jason Smith, the Chair of the House Ways & Means Committee, which has jurisdiction over tax policy. The letter, which is included as an attachment, notes that the majority party "ran – and won – on a promise to completely dismantle the IRA and end the left's green welfare agenda." No members of Congress from California signed the letter.

In March, 21 members of the House majority party sent a competing letter to the chair of the House Ways and Means Committee stating that repeal of tax credits "would increase utility bills the very next day." Three members of Congress from California signed the letter. The two letters represent competing views among the majority party in the House of Representatives.

Related, on April 29, a group of 272 business, renewables, and utility stakeholders sent a letter to Congress urging them to "retain the existing energy tax credits which are vital to unleashing American energy to lead the world on economic growth, AI, and manufacturing." The letter is included as an attachment.

The IRA tax credits – such as the Investment Tax Credit and the Production Tax Credit – are expected to be considered during the budget reconciliation process, which could wrap up as soon as July 4.

FISCAL IMPACT:

N/A

ATTACHMENTS:

A: March 9 Congressional Letter on IRA Tax Credits

B: May 1 Congressional Letter on IRA Tax Credits

C: April 29 Coalition Letter on IRA Tax Credits

ITEM 8 ATTACHMENT A

Congress of the United States

Washington, DC 20515

March 9, 2025

The Honorable Jason Smith Chairman Ways & Means Committee U.S. House of Representatives Washington, D.C. 20515

Dear Chairman Smith:

As Members of the House Republican Conference, we write to emphasize the importance of prioritizing energy affordability for American families and keeping on our current path to energy dominance amid efforts to repeal or reform current energy tax credits.

We strongly support the Administration's America First national energy dominance initiative. Continued energy expansion and innovation is necessary to bolster national security, create goodpaying American jobs, and guarantee energy independence. The United States continues to produce energy from a myriad of sources that are cleaner and more efficient than anywhere else in the world. As our conference has long believed, an all-of-the-above energy approach, combined with a robust advanced manufacturing sector, will help support the United States' position as a global energy leader.

Countless American companies are utilizing sector-wide energy tax credits – many of which have enjoyed broad support in Congress – to make major investments in domestic energy production and infrastructure for traditional and renewable energy sources alike. Both our constituencies and the energy industry alike remain concerned about disruptive changes to our nation's energy tax structure. Many credits were enacted over the course of a ten-year period, which allowed energy developers to plan with these tax incentives in mind. These timelines have been relied upon when it comes to capital allocation, planning, and project commitments, all of which would be jeopardized by premature credit phase outs or additional restrictive mechanisms such as limiting transferability. As energy demand continues to skyrocket, any modifications that inhibit our ability to deploy new energy production risk sparking an energy crisis in our country, resulting in drastically higher power bills for American families. This is especially true for energy credits with direct passthrough benefit to ratepayers, where such repeals would increase utility bills the very next day. As our conference works to make energy prices more affordable, tax reforms that would raise energy costs for hard working Americans would be contrary to this goal. Further, affordable and abundant energy will be critical as the President works to onshore domestic manufacturing, supply chains, and good paying jobs, particularly in Republican run states due to their business-friendly environments. Pro-energy growth policies will directly support these objectives.

At the same time, there are plenty of shortcomings in our tax code that can and should be addressed to rein in spending and promote fiscal responsibility in the upcoming reconciliation bill.

With all this in mind, we request that any proposed changes to the tax code be conducted in a targeted and pragmatic fashion that promotes conference priorities without undoing current and

future private sector investments which will continue to increase domestic manufacturing, promote energy innovation, and keep utility costs down. We believe we can work together so that all these goals are achievable.

We appreciate your work to unite House Republicans on this important matter. We hope you can consider us partners in modernizing and improving our nation's tax policies to unleash American energy and protect families from higher energy costs.

Sincerely,

Andrew R. Garbarino Member of Congress

Jenn fer Kiggans Member of Congress

Gabe Evans

Member of Congress

David G. Valadao Member of Congress

Mark E. Amodei Member of Congress

house S. Amores

Member of Congress

Michael V. Lawler Member of Congress

Don Bacon

Member of Congress

Young Kim Member of Congress

Vince Fong

Member of Congress

Telf Hurd
Member of Congress

Nick LaLota
Member of Congress

Ryan Mackenzie Member of Congress

Mariannette J. Miller-Meeks, M.D.

Member of Congress

Dan Newhouse Member of Congress

David P. Joyce / Member of Congress

Thomas H. Kean, Jr.
Member of Congress

John James Member of Congress

Rob Bresnahan, Jr. Member of Congress

Earl L. "Buddy" Carter Member of Congress

Earl I Bully Carte

Erin Houchin
Member of Congress

ITEM 8 ATTACHMENT B

Congress of the United States Mashington, DC 20515

May 1, 2025

The Honorable Jason Smith Chairman Ways & Means Committee U.S. House of Representatives Washington, D.C. 20515

Dear Chairman Smith:

As fellow Members of the House Republican Conference, we write to underscore the urgent need to fully repeal the Inflation Reduction Act (IRA) and its green energy subsidies, which will cost taxpayers approximately \$1 trillion over the next decade. We are deeply concerned that President Trump's commitment to restoring American energy dominance and ending what he calls the "green new scam" is being undermined by parochial interests and short-sighted political calculations.

The IRA contains eight major energy subsidies, each of which burdens taxpayers, inflates energy costs, and threatens the reliability of our power grid. Each of these subsidies props up unreliable energy sources while displacing dependable, proven energy like coal and natural gas.

Republicans ran—and won—on a promise to *completely* dismantle the IRA and end the left's green welfare agenda. The first chapter of our 2024 platform reaffirms our commitment to "terminating the Socialist Green New Deal." Despite our previously unified stance, some Members of our conference now feel compelled to defend wind and biofuel credits, advocate for carbon capture and hydrogen subsidies, or protect solar and electric vehicle giveaways. Keeping even one of these subsidies opens the door to retaining all eight. How do we retain some of these credits and not operate in hypocrisy? The longstanding Republican position has been to allow the market to determine energy production. If every faction continues to defend their favored subsidies, we risk preserving the entire IRA because no clearly defined principle will dictate what is kept and what is culled.

Leaving IRA subsidies intact will actively undermine America's return to energy dominance and national security. In 2024 alone, solar represented 61% of all new electricity generation in our nation, with more expected this year.² By the end of this year, wind generation in the U.S. is

¹ https://prod-static.gop.com/media/RNC2024-Platform.pdf.

² https://www.eia.gov/todayinenergy/detail.php?id=64586.

expected to increase 11% from 2023 because of these subsidies.³ These numbers do not reflect a natural market shift. They are the result of government subsidies that distort the U.S. energy sector, displace reliable coal and natural gas and the domestic jobs they produce, and put the stability and independence of our electric grid in jeopardy.

To see the consequences of this path, we need only to look at Europe's overreliance on renewables, which has left them vulnerable and reliant on Russian oil and gas. Meanwhile, China gladly sells us solar panels and electric vehicle components while expanding its own coal capacity to maintain grid stability and economic advantage. If we do not course correct, we will trade American energy dominance for dependence on hostile regimes.

Our path forward is clear. We must fully repeal the IRA's green subsidies. Doing so will:

- Save Taxpayers \$1 trillion. Estimates project the Inflation Reduction Act will cost between \$825 billion—according to the Congressional Budget Office as of January 2025—and over \$1 trillion, per analysts at Goldman Sachs, over the next decade. Eliminating these subsidies will allow us to rein in the debt and reallocate funds to genuine national priorities.
- Ease inflation and spur economic growth. IRA subsidies exacerbate inflation and push up interest rates, making it harder for Americans to buy homes and cars and start businesses. Repealing them will provide immediate financial relief and create a stronger economic environment.
- Restore energy affordability and security. IRA subsidies force utilities to overbuild solar and wind capacity, weakening grid reliability and increasing energy costs. Ending these subsidies will restore affordability and stability to our energy supply.

This is our only opportunity for an IRA repeal. Without effectively *fully* repealing all IRA subsidies, as envisioned under the House reconciliation framework, we would jeopardize America's return to energy dominance and passage of an extension of the expiring Tax Cuts and Jobs Act (TCJA) provisions, as well as the President's other tax priorities. Failure to act undermines the mandate given to us by the American people.

We urge our colleagues to stand firm in the upcoming reconciliation process. We must reject half-measures and deliver a full repeal of the IRA's energy subsidies for the sake of American taxpayers and for the future of American energy.

Sincerely,

³ https://www.eia.gov/outlooks/steo/.

⁴ https://www.reuters.com/business/energy/us-clean-energy-tax-subsidies-cost-825-billion-over-10-years-cbo-says-2025-01-17/; https://www.goldmansachs.com/pdfs/insights/pages/gs-research/carbonomics-the-third-american-energy-revolution/report.pdf.

Josh Brecheen Member of Congress

Chip Roy Member of Congress

Andy Biggs Member of Congress Paul A. Gosar, D.D.S. Member of Congress

Mary E. Miller
Member of Congress

Pat Fallon Member of Congress

Andy Harris, M.D. Member of Congress Byron Donalds Member of Congress

Tim Burchett Member of Congress Marjorie Taylor Greene Member of Congress Barry Moore Member of Congress

Clay Higgins Member of Congress

Thomas Massie

Member of Congress

Eric Burlison Member of Congress

Rich McCormick, M.D., MBA Member of Congress

Scott Perry Member of Congress

Member of Congress

Member of Congress

Andy Ogles Member of Congress

ard & Haves Member of Congress

Lauren Boebert Member of Congress

Warren Davidson Member of Congress

Brandon Gill

Member of Congress

Andrew S. Clyde Member of Congress

Lance Gooden

Member of Congress

Anna Paulina Luna Member of Congress

Nancy Mace

Member of Congress

Keith Self

Member of Congress

Member of Congress

Ralph Norman

Member of Congress

Tom Tiffany
Member of Congress

Michael Rulli Member of Congress

Victoria Spartz
Member of Congress

Mark E. Green, M.D. Member of Congress

CC: President Donald J. Trump Vice President J.D. Vance House Speaker Mike Johnson Marlin Stutzman Member of Congress

Harriet M. Hageman Member of Congress

Nick Begich

Member of Congress

Randy Fine

Member of Congress

ITEM 8 ATTACHMENT C

April 29, 2025

The Honorable Mike Johnson, Speaker U.S. House of Representatives 521 Cannon House Office Building Washington, DC 20515

The Honorable Jason Smith, Chair House Ways and Means Committee 1011 Longworth House Office Building Washington, DC 20515 The Honorable Hakeem Jeffries, Minority Leader U.S. House of Representatives 2267 Rayburn House Office Building Washington, DC 20515

The Honorable Richard Neal, Ranking Member House Ways and Means Committee 372 Cannon House Office Building Washington, DC 20515

Dear Speaker Johnson, Leader Jeffries, Chairman Smith, and Ranking Member Neal:

We, the undersigned companies and trade organizations, urge Congress to retain the existing energy tax credits which are vital to unleashing American energy to lead the world on economic growth, AI, and manufacturing. Collectively, the signatories to this letter represent business interests in 43 states, and the companies alone represent over \$450 billion in capital and more than 165,000 employees.

These credits are the basis for significant manufacturing investment and jobs in the United States, promoting greater efficiency, growth in energy production, and the delivery of the capacity needed to keep our country at the leading edge of global energy innovation.

The United States is already experiencing sharp increases in energy demand coupled with concerns about rising energy costs. A recent report by S&P Global Commodity Insights predicts that <u>U.S. electricity</u> <u>demand will surge by 35-50%</u> over the next few decades, driven by AI, data centers, and the onshoring of U.S. manufacturing.

A broad portfolio of supply-side and demand-side energy solutions is ready to meet this new load. Clear, predictable, and long-term tax policy is essential for market confidence and unlocking significant investments quickly in our nation's energy production and infrastructure. This will lead to greater energy abundance and lower energy bills for Americans.

Energy tax policies – many of which are the product of bipartisan tax legislation over the past 20 years – have leveraged billions of dollars of private capital and have helped to create millions of good-paying American jobs.

Companies plan with these tax incentives in mind and rely upon them for capital allocation, planning, and project commitments – all of which would be jeopardized by premature credit phase outs or additional restrictions. Further, these tax credits are critical to expanding economic development and growing the economy. Companies can lower their capital costs and increase investment in research and development to maintain the nation's competitiveness.

Any tax policy changes that inhibit new production and demand-side solutions from coming online also risk the reliability and affordability of our nation's energy.

According to a new report by Energy Innovation, repealing federal energy tax credits would <u>increase</u> <u>annual energy bills</u> for U.S. households by more than \$6 billion in 2030 and more than \$9 billion in 2035.

Similarly, NERA Economic Consulting estimates that <u>electricity bills for businesses would increase</u> by about 10% by 2026 if the tax credits are repealed, with costs likely passed on to consumers in the form of higher prices for goods and services.

We need every form of energy available to unleash America's full potential. We must act quickly to modernize and expand the energy system to supply the data centers, artificial intelligence, and domestic manufacturing that are vital to our economic and innovative edge.

Now is not the time to disrupt the market by changing the current energy tax structure. We urge Congress to support sector-wide energy tax credits as it considers tax policy changes this year.

Sincerely,

SolaRay Farms, Inc. - Phoenix, AZ

Capital Power - Phoenix, AZ

Kiterocket - Phoenix, AZ

Learning Edge, LLC - Paradise Valley, AZ

Arevon Energy, Inc. - Scottsdale, AZ

Grannus, LLC - Tucson, AZ

JA Roth Consulting, LLC - Tucson, AZ $\,$

Willdan Energy Solutions - Anaheim, CA

GOGETIT LLC - Calabasas, CA

Sapphire Technologies, Inc. - Cerritos, CA

Air Voltaics LLC - Fallbrook, CA

Terra-Vista Wildfire Defense - Lafayette, CA

Salton Energy Inc. - Lake Forest, CA

Woods Bagot - Los Angeles, CA

Climate Forward Strategies - Oakland, CA

Pacific Gas and Electric Company - Oakland, CA

Terrajoule Energy Inc. - Palo Alto, CA

Amy's Kitchen - Petaluma, CA

Green Energy Solutions Team - Rancho Cucamonga, CA

EVO Power USA, Inc. - Rancho Santa Margarita, CA

California Hydrogen Business Council - Sacramento, CA

HMC Architects - Ontario, CA

RNG Coalition - Sacramento, CA

Sacramento Municipal Utility District - Sacramento, CA

(W)right On Communications - San Diego, CA

Long Duration Energy Storage Council - San Francisco, CA

Metrus Energy - San Francisco, CA

Powertree Services Inc. - San Francisco, CA

QuitCarbon - San Francisco, CA

Next Energy Technologies, Inc. - Santa Barbara, CA

Open Doors Management - Solana Beach, CA

Force Energy Corporation - Sonora, CA

SVI Group - Sunnyvale, CA

Bailte Construction - West Hollywood, CA

Scout Clean Energy - Boulder, CO

Rebound-Tech - Commerce City, CO

Akku Energy Devices LLC - Denver, CO

Big Glasses Consulting - Denver, CO

Cowboy Clean Fuels - Denver, CO

Koloma - Denver, CO

Perfect Energy, Inc. - Denver, CO

Gevo, Inc. - Englewood, CO

Tap Energy LLC - Denver, CO

Joelson Consulting - Fort Collins, CO

Atlasta Solar Center - Grand Junction, CO

Senergy Builders - Grand Junction, CO

Headwaters Companies - Littleton, CO

CORE Electric Cooperative - Sedalia, CO

The SLAM Collaborative - Glastonbury, CT

Empere, LLC - Norwich, CT

Alliance to Save Energy - Washington, DC

American Biogas Council - Washington, DC

American Biomass Energy Assoc. - Washington, DC

American Clean Power Assoc. - Washington, DC

American Council on Renewable Energy - Washington, DC

Business Council for Sustainable Energy - Washington, DC

Carbon Capture Coalition - Washington, DC

Cellulose Insulation Manufacturers Assoc. - Washington, DC

Clean Energy Business Network - Washington, DC

E2 - Washington, DC

Electric Drive Transportation Assoc. - Washington, DC

Federal Performance Contracting Coalition - Washington, DC

Heat is Power Assoc. - Washington, DC

Lucey Consulting LLC - Washington, DC

National Assoc. of Energy Service Companies - Washington, DC

National Hydropower Assoc. - Washington, DC

Portland Cement Assoc. - Washington, DC

Solar Energy Industries Assoc. - Washington, DC

The Ultra Low Carbon Solar Alliance - Washington, DC

U.S. Green Building Council - Washington, DC

WATT Coalition - Washington, DC

Structural Insulated Panel Assoc. - Fort Lauderdale, FL

RS&H - Jacksonville, FL

Hydrokinetic Energy Corp. - Key West, FL

ecoPreserve - Orlando, FL

Penn Renewables - Pompano Beach, FL

Utility Saving Solutions, Inc. - Alpharetta, GA

Assoc. of Energy Engineers - Atlanta, GA

Better Tomorrow Solar - Atlanta, GA

BONA Investment Properties, LLC - Atlanta, GA

Teverra LLC - Atlanta, GA

TVS - Atlanta, GA

Sigma Thermal, Inc. - Marietta, GA

Axle Plus - Conyers, GA

Ampacimon - Cumming, GA

ElectraTherm, Inc. / BITZER USA - Flowery Branch, GA

RE Innovations LLC - Loganville, GA

Hawaii Fish Company Inc. - Waialua, HI

Eocene Environmental Group - West Des Moines, IA

Frontline BioEnergy, LLC - Nevada, IA

Verdant Resolutions - Boise, ID

Synergy ECOHUB Solutions, Inc. - Nampa, ID

Kazadi Enterprises Ltd. - Batavia, IL

GRP WEGMAN Company - Bethalto, IL

Clear Sky Energy Solutions - Chicago, IL

Greater Englewood Chamber Foundation - Chicago, IL

Midwest Energy Efficiency Alliance - Chicago, IL

Studio Nigro LLC - Chicago, IL

WJW Architects - Chicago, IL

Open Hydrogen Initiative - Des Plaines, IL

FM Energy Consulting Inc. - Naperville, IL

Avid Solutions Intl - Peoria, IL

Geothermal Alliance of Illinois - Springfield, IL

Geothermal Exchange Organization - Springfield, IL

Clean Energy Business Council - Hutchinson, KS

Orange EV - Kansas City, KS

Rice-Stromgren Architects - Lawrence, KS

The Bowersock Mills & Power Co. - Lawrence, KS

Sunflower Fuels - Lexington, KY

Concord Energy Strategies, LLC - Louisville, KY

Rain CII Carbon LLC - Covington, LA

Mavel Americas, Inc. - Boston, MA

Schneider Electric - Boston, MA

Shepley Bulfinch - Boston, MA

Cleantech Leaders Roundtable - Cambridge, MA

Ameresco - Framingham, MA

Ambri - Marlborough, MA

Viridi Edge - Newton, MA

Greentown Labs - Somerville, MA

Pecos Wind Power - Somerville, MA

Save Energy Systems, Inc. - Westborough, MA

Good Clout Consulting - Cambridge, MA

AIA Maryland - Annapolis, MD

Hord Coplan Macht - Baltimore, MD

Luminace - Baltimore, MD

Oceantic Network - Baltimore, MD

Resource Management Associates - Bethesda, MD

WindRun Strategies, LLC - Bethesda, MD

CoolPact Capital - Baltimore, MD

GHG Engineering, LLC - Rockville, MD

Princeton Energy Resources International LLC - Rockville, MD

ClearlyEnergy - Severna Park, MD

Alliance for Green Heat - Takoma Park, MD

ClimateWork Maine - Portland, ME

Dynamic Grid - Portland, ME

Energy Alliance Group - Ann Arbor, MI

Quinn Evans - Ann Arbor, MI

Peaker Services, Inc. - Brighton, MI

Utility Transformation Consortia - Clinton Township, MI

Heiss Consulting Services LLC - Detroit, MI

Newman Consulting Group, LLC - Farmington Hills, MI

Michigan Sustainable Business Forum - Grand Rapids, MI

Sesame Solar Inc. - Jackson, MI

Absolute Solar - Lansing, MI

Cedar Creek Energy - Coon Rapids, MN

Winkelman Solar LLC - Brainerd, MN

Conners Consulting - Eden Prairie, MN

EcoThrive LLC - La Crescent, MN

Clean Energy Economy Minnesota - Minneapolis, MN

Energy Aspects LLC - Minneapolis, MN

HGA - Minneapolis, MN Multistudio - Kansas City, MO Populous - Kansas City, MO

Hellmuth & Bicknese Architects - St. Louis, MO

Accelerate Wind, Inc. - St. Louis, MO

ROCKWOOL North America - Byhalia, MS Mississippi Energy Developers - Lena, MS

Sweetgrass Associates - Big Timber, MT High Plains Architects, P.C. - Billings, MT High Ridge Leadership, LLC - Missoula, MT

Oasis Montana Inc. - Stevensville, MT Intelli-Products Inc. - Asheville, NC Pisgah Energy Inc. - Asheville, NC EIP Storage - Chapel Hill, NC

Anchor Tree Development, LLC - Charlotte, NC

Little Diversified Architectural Consulting - Charlotte, NC

Trane Technologies - Davidson, NC Carolina Solar Energy LLC - Chapel Hill

LEO A DALY LLC - Omaha, NE Tenaska, Inc. - Omaha, NE

Propane Gas Assoc. of New England - Epsom, NH

Energy Efficient Investments, Inc. - Merrimack, NH Merit SI LLC, dba Merit Controls - Somerville, NJ

Spar Systems - Montvale, NJ

Fujitsu General America - Pine Brook, NJ

Utopio Inc. - Princeton, NJ Anax Power - Wharton, NJ

Equiterra Regenerative Design - Albuquerque, NM

OE Solar - Albuquerque, NM

The Reno + Sparks Chamber of Commerce - Reno, NV

ecoLong LLC - Albany, NY

Aphra Communications - Brooklyn, NY

Basis Climate - New York, NY Dollaride - Brooklyn, NY FXCollaborative - Brooklyn, NY

Buffalo Renewables Inc. - Tonawanda, NY Siva Powers America Inc. - Buffalo, NY

Dimensional Energy - Ithaca, NY

Centrica Business Solutions - Malta, NY

Lighthouse Solar - New Paltz, NY

Blue Lake Clean Energy Group LLC - New York, NY

Brookfield Renewable - New York, NY

Build Efficiently, LLC - New York, NY

CannonDesign - New York, NY CleanCapital - New York, NY

Emotiva - New York, NY

HLW International - New York, NY

IPPsolar LLC - New York, NY

Lexden Capital, LLC - New York, NY

MAC Energy Advisors LLC - New York, NY

New York Angels, Inc. - New York, NY VL Harmon Advisors - New York, NY RED Rochester LLC - Rochester, NY

Storke, LLC - Springwater, NY

Special Power Sources - Alliance, OH Harmony Architecture - Cincinnati, OH Hubay Dougherty - Cleveland, OH Moody Nolan, Inc. - Columbus, OH

Bergey Windpower Co. LLC - Norman, OK

Elexity - Bend, OR

NLine Energy, Inc. - Bend, OR Sun Raven LLC - Bend, OR

Concho Energy - Freedom, OK

Basque Beginnings LLC - Maupin, OR

Brockman Climate Strategies LLC - Portland, OR

ZGF Architects LLP - Portland, OR

Michael W Grainey Consulting LLC - Salem, OR

Windurance, LLC - Coraopolis, PA

Alternative Energy Development Group, LLC - Malvern, PA

Philadelphia Solar Energy Assoc. - Philadelphia, PA

BLD:ac - Pittsburgh, PA

RER Energy Group - Reading, PA

LAC-TER - Scranton, PA

Cooperativa de Energia La Margarita - Abeyno Coop - Salinas, PR

Copacity, Inc. - Providence, RI

LS3P - Charleston, SC

Rosebud Energy Services Company - Rosebud, SD GenPro Energy Solutions, LLC - Piedmont, SD

TerraShares - Morristown, TN

Conservative Texans for Energy Innovation - Austin, TX

Terra Lumina Consulting - Austin, TX

JSJ Services - Belton, TX

Green Careers Texas - Dallas, TX

HKS, Inc. - Dallas, TX Huitt-Zollars - Dallas, TX

MM Solar Advisory, LLC - Dallas, TX

The Beck Group - Dallas, TX

Kanin Energy - Houston, TX

NRG Energy Inc. - Houston, TX

NXTClean Fuels, Inc. - Houston, TX

Redfield Consulting Services - San Antonio, TX

Inergy - Orem, UT

Particle Flux Analytics Inc. - Park City, UT

GlycoSurf, Inc. - Salt Lake City, UT

North American Insulation Manufacturers Assoc. - Alexandria, VA

National Electrical Manufacturers Assoc. - Arlington, VA

New Energy Venture Associates - Arlington, VA

Polyisocyanurate Insulation Manufacturers Assoc. - Arlington, VA

Responsible Alpha - Arlington, VA

The Stella Group, Ltd - Arlington, VA

Sheet Metal & AC Contractors National Assoc. - Chantilly, VA

BrightView Energy - Charlottesville, VA

Cobalt Growth Advisory - Falls Church, VA

Copper Development Assoc. - McLean, VA

Synurja LLC - Vienna, VA

Encore Renewable Energy - Burlington, VT

Eocycle America Corporation - Swanton, VT

Forest Concepts, LLC - Auburn, WA

Silfab Solar Inc. - Burlington, WA

Brad Thompson Company - Kirkland, WA

Appropriate Technology Group - Seattle, WA

DLR Group - Seattle, WA

Ever.green - Seattle, WA

Omnidian - Seattle, WA

Svante - Seattle, WA

NAC Architecture - Spokane, WA

CarbonQuest - Spokane Valley, WA

Cheq Bay Renewables - Bayfield, WI

Weather Blanket Insulation - Fond du Lac, WI

A. O. Smith - Milwaukee, WI

Johnson Controls - Milwaukee, WI

Franklin Energy - Washington, WI



SAN DIEGO COMMUNITY POWER Staff Report – Item 9

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Jen Lebron, Senior Director of Public Affairs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Community Advisory Committee Monthly Report

DATE: May 22, 2025

RECOMMENDATION:

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

BACKGROUND:

Per Section 5.10.3 of the San Diego Community Power (Community Power) Joint Powers Authority 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 a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of SDCP.

At the direction of the Board Chair, the CAC provides quarterly presentations to the Board of Directors in the regular agenda and monthly reports in the consent agenda. The next quarterly update is expected to take place at the May 22, 2025 Board meeting.

ANALYSIS AND DISCUSSION:

During the May 8, 2025, regular CAC meeting:

- Chair Vasilakis (City of San Diego) welcomed new Community Power staff, and led the unanimous approval of the consent agenda, which included updates on Customer Operations, Marketing, Public Relations and Local Government Affairs, Power Services, Programs, and Regulatory and Legislative Affairs.
- The CAC received a presentation from the Programs team on Vehicle-Grid Integration. Members had questions around battery warranty, charging fleet inventory and needs from member agencies, program marketing and enrollment

- strategies, and local automaking presence, with the suggestion of creating partnerships that foster workforce training on emerging technologies.
- Members also heard an update on the Solar Advantage Program. Members asked about battery inclusion in the solicitation, upfront financing, and collaboration with member agencies to augment project benefits. Member Sclafani (City of Chula Vista), who represents the member agency where the Luminia project is in, congratulated staff for repurposing a community hub previously used for a public good during the pandemic, and asked clarifying questions on the enrollment priority system, encouraging Community Power to take a more collaborative approach with developers that ends up in more community projects that directly benefit the neighboring communities.
- The Chair shared as an announcement that Community Power visited Orange County Power Authority's CAC earlier in May to provide an overview of how members inform decision-making. No Board of Directors items were recommended.

As of May 22, 2025, the CAC has one vacancy representing the City of Chula Vista. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancy continues to be advertised at meetings, community events, and through Community Power's social media.

1100/12 11111 /1011
N/A
ATTACHMENTS:

N/A

FISCAL IMPACT



SAN DIEGO COMMUNITY POWER Staff Report – Item 10

TO: Board of Directors

FROM: Jack Clark, Chief Operating Officer

Jen Lebron, Senior Director of Public Affairs

Xiomalys Crespo, Sr. Community Engagement Manager

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Community Advisory Committee Report

DATE: May 22, 2025

RECOMMENDATION:

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

BACKGROUND:

Per Section 5.10.3 of the San Diego Community Power (Community Power) 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 Community Power.

At the direction of the Chair of Community Power's Board of Directors, the CAC, via staff, provides monthly updates and quarterly reports during the regular meetings of the Board of Directors. The last quarterly update was provided during the February 27, 2025, regular meeting.

ANALYSIS AND DISCUSSION:

At the February 27, 2025, regular meeting of the Board of Directors, staff and the Chair of the CAC presented a summary of CAC activities from October through January. This report summarizes February through April.

<u>February:</u> Due to lack of agenda items, the meeting was canceled at the recommendation of the CAC Chair.

March: Chair Vasilakis (City of San Diego) welcomed new CAC member Ross Pike (unincorporated San Diego County). Community Power CEO Karin Burns provided an update on Strategic Planning Goals for FY2026-2028; CAC members had an opportunity to provide feedback on this process earlier this year via individual briefings. The CAC unanimously voted to recommend Board approval of the item. Members also received a presentation on 2025 Rate Adjustments, as approved by the Board in February. Finally, members heard from the 2024 and 2025 cycles of the Community Clean Energy Grant Program, and a member sought clarification on the year-to-year difference in the program budget.

April: The CAC welcomed new member Shaun Sumner (City of La Mesa). The Regulatory and Legislative Affairs team provided its quarterly presentation, in which members asked questions around financing and undergrounding provisions on 47 Senate bills being supported by Community Power and recognized the work of the Regulatory and Legislative Affairs team, offering up their support in representing their communities when advocating for critical issues at different decision-making levels. Members also received a presentation on Equitable Building Decarbonization Direct Install Program, which is only open to low-income communities and will include renters. Lastly, the Power Services team provided an overview of items they will bring to the CAC in the coming months, which include those that the CAC has previously expressed interest in, such as local infill procurement, progress towards achieving 100% renewable energy by 2035, battery safety, and the Energy Proposal Evaluation Criteria. Members thanked Chief Commercial Officer Byron Vosburg for his contributions to the agency as he departs Community Power and requested future presentations on feed-in tariff programs and battery storage safety concerns.

As of May 6, 2025, the CAC has a vacancy representing the City of Chula Vista. Prospective members of the CAC must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancy continues to be advertised at meetings, community events, and through Community Power's social media.

Staff will return to the Board of Directors in the summer of 2025 to report on quarterly activities for the rest of the fiscal year.

FISCAL IMPACT:	
N/A	
ATTACHMENTS:	
N/A	



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

TO: Board of Directors

FROM: Dr. Eric Washington, Chief Financial Officer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Presentation of Draft of FY 2025-2026 Operating Budget, FY 2025-2026

Capital Budget, and FY 2026-2030 Capital Investment Plan

DATE: May 22, 2025

RECOMMENDATION:

Receive and File Preliminary Draft of FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan.

BACKGROUND:

On October 1, 2019, the Founding Members of San Diego Community Power (Community Power) 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 Community Power Board of Directors (Board) shall adopt an annual budget prior to the commencement of the fiscal year. The JPA further provides that Community Power's fiscal year runs from July 1 to June 30, unless changed by the Board.

Section 7.3.1 of the JPA requires that Community Power budgets be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval.

On July 28, 2022, the Board adopted a budget development schedule as part of the Community Power Budget Policy. This development schedule includes an annual budget review in May by the Financial and Risk Management Committee (FRMC), which occurs prior to the Community Power Board of Directors (Board) previewing the budget in May and prior to the Board potentially adopting the budget in June.

Table 1. Current Budget Development Schedule

February	March-April	May	June		
Develop Operating Revenue Estimate	Staff develop operating budgets	Strategic planning sessions with SDCP	Financial and Risk Management	July 1 st Budget Implemented	
Develop Operating	Baseline budget is	Board	Committee Review	Mid-year budget	
Expense Estimate	developed		SDCP Board Approval	review (February)	
Develop financial plan for credit rating in 3-years		(Information Item)		Budget amendment as necessary	

Table 2 illustrates the proposed FY 2025-2026 budget in comparison to Community Power's budgets from prior years. Note that the CIP is included in Total Expenses.

Table 2. Community Power Budget History

Operating Budget	Net Revenues	Total Expenses	Net Position
FY 2020-2021 Amendment	\$26,286,909	\$33,778,000	(\$7,848,092)
FY 2021-2022 Amendment	\$378,053,506	\$341,177,063	\$35,876,443
FY 2022-2023 Amendment	\$929,791,929	\$772,078,710	\$157,713,219
FY 2023-2024 Amendment	\$1,304,274,067	\$1,070,891,284	\$233,382,783
FY 2024-2025 Amendment	\$1,221,258,172	\$1,187,090,169	\$34,168,003
FY 2025-2026 Proposed	\$1,199,619,579	\$1,034,189,011	\$165,430,569

ANALYSIS AND DISCUSSION:

The proposed FY 2025-2026 operating budget includes net operating revenue of \$1,199,619,579 and total expenses of \$1,034,189,011, resulting in net position of \$165,430,569.

The proposed FY 2025-2026 capital budget includes revenue and expenses of \$54,390,333 to fund 12 projects in FY 2025-2026 totaling 21 active projects during the fiscal year.

The proposed FY 2026-2030 capital investment plan includes 21 projects that will receive funding in the five-year period, totaling \$304.3 million in investments. The first year of the FY 2026-2030 CIP comprises the FY 2025-2026 capital budget. Additionally, \$10.3 million in unspent continuing funds were appropriated by the Board in prior fiscal years and is represented as carryforward revenue.

The proposed budget includes the key assumptions outlined below.

Operating Revenue

Community Power's net operating revenue consists primarily of revenues from sales of electricity. Assumptions regarding net operating revenue include:

• Enrollment of customers is complete from all member jurisdictions.

- 95% participation rate across all jurisdictions.
- A 1.75% uncollectible rate which remains the same as last fiscal year.
- Rates that were set and approved by the Board on February 7, 2025.

Cost of Energy includes all the various services purchased from the power market through our counterparties to supply energy to Community Power's customers.

Operating Expenses

Community Power's non-energy operating expenses fall into four categories: "personnel costs", "professional services and consultants", "marketing and outreach", and "general and administration." Expense assumptions include the following:

- **Personnel** include salaries, payroll taxes, benefits, and excused absence and paid time off for staff. The recruitment strategy includes the addition of approximately 7 new staff members during the FY 2025-26 budget cycle, growing the agency to 94 total staff.
- Professional Services and Consultants include SDGE 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 notices, communication consultants, mailers, printing, sponsorships, and partnerships to inform the community of Community Power.
- General and Administration budget covers the cost of office space, equipment, membership dues, and other general operational costs.

Non-Operating Expenses

Community Power's budget also includes non-operating expenses related to interest and related expenses used to finance its operations. These costs are comprised of associated interest costs as well as potential renewal fees on debt or letters of credit.

Capital Investment Program (CIP)

In FY 2025-2026 Community Power is continuing its 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 2025-2026 operating budget proposes 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. Additionally, the first year of the CIP is the proposed FY 2025-2026 capital budget.

Net Income

The proposed FY 2025-26 budget results in a net position of \$165,430,569.

The following table illustrates Community Power's proposed FY 2025-26 operating budget compared to the amended budgets for FY 2023-24 and FY 2024-25.

Table 3. FY 2025-26 Proposed Budget compared to the FY 2023-24 and FY 24-25 Amended Budgets.

	FY24 Amended	FY25 Amended	FY26 Proposed
Gross Revenue	1,365.7	1,243.0	1,221.0
Less Uncollectible Accounts	-61.4	-21.8	-21.4
Net Operating Revenues	1,304.3	1,221.3	1,199.6
Cost of Energy	1,020.8	1,116.8	956.7
Non-Energy Costs	43.8	50.8	54.3
Subtotal Operating Expense	1,064.6	1,167.6	1,010.9
Debt Service	2.4	1.3	1.9
Capital Investment Program (Transfer Out)	4.7	18.2	21.4
Total Expenses	1,071.0	1,187.1	1,034.2
Net Position	233.3	34.2	165.4
			Amounts displayed in

Amounts displayed in millions, \$

The next table illustrates Community Power's proposed FY 2026-2030 capital investment plan. The first year of the FY 2026-2030 capital investment plan represents Community Power's FY 2025-2026 capital budget.

Table 4. Community Power FY 2026-2030 Capital Investment Plan

	Carry- forward	5-Year Capital Investment Plan			ent Plan		
	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding							
Regional Energy							
Network	0.3	31.8	59.5	51.4	42.0	43.7	228.7
DAC-GT	0.5	0.3	0.5	0.5	0.5	0.5	2.7
CDFA	0.5	-	-	-	-	-	0.5
Equitable Building							
Decarbonization	1.5	-	-	-	-	-	1.5
Other	-	0.9	-	-	-	-	0.9
Subtotal	2.8	33.0	60.0	51.9	42.5	44.2	234.4
Solar Battery Savings	2.7	18.8	11.1	10.4	8.3	8.5	59.8
Energy Efficiency	-	-	-	-	-	-	-

CIP Expense Total	10.3	54.4	71.7	62.9	51.6	53.4	304.3
Subtotal	7.5	21.4	11.7	11.0	9.1	9.2	69.9
Other	-	0.2	-	-	-	-	0.2
Program Evaluation	-	0.3	-	-	-	-	0.3
App Assistance	-	0.3	-	-	-	-	0.3
Community Education	0.0	-	-	-	-	-	0.0
IT Projects	2.0	1.5	-	-	-	-	3.5
Flexible Load	0.2	0.3	0.6	0.6	0.8	0.7	3.1
DER	0.1	-	-	-	-	-	0.1
Grants	0.7	0.8	-	-	-	-	1.5
Pilot Programs	1.7	-	-	-	-	-	1.7

FISCAL IMPACT:

The proposed FY 2025-26 budget is expected to result in a net position of \$165.4 million, with resulting total cash reserves of \$572.8 million, or 207-days cash on hand by the end of FY 2025-2026, based on the agency's current projections which are subject to change, especially as energy markets fluctuate.

Community Power additionally proposes a one-time investment of \$21.4 million into the agency's Capital Investment Program. The large majority of this one-time investment is meant to fund \$18.8 million for the Solar Battery Savings program, which offers upfront and performance-based incentives for home battery systems that boost resilience and reduce grid demand. The program was recognized in the U.S. Department of Energy's 2025 Virtual Power Plant Liftoff Report as a model for customer-centered innovation in distributed energy and offers incentives savings to customers while also reducing energy costs for Community Power during peak periods of demand.

ATTACHMENTS:

A: Draft FY 2025-2026 Operating Budget Book

B: Draft FY 2026-2030 Capital Investment Plan

ITEM 11 ATTACHMENT A



2025 2026



SAN DIEGO COMMUNITY POWER

Operating Budget Fiscal Year 2025-2026

Contents

ŀ	How to Use This Book	1
Æ	A Letter from the Chief Executive Officer	2
(Overview of San Diego Community Power	5
	Who We Are	5
	About Community Choice	6
	How It Works	6
5	Serviced Communities	7
	County Population	7
	Governance and Structure	9
	Organizational Structure	10
	Executive Team	10
E	Budget Process	12
	Annual Budget Cycle	12
	Strategic Planning	13
	Community Outreach Strategy	17
E	Budget Guidelines	19
	Budget Structure	20
	Fund Structure	22
	FY 2025–2026 Budget Principles	23
E	Budget Overview	25
	Budget in Brief	25
	Proposed Operating Budget	25
	Operating Revenue	26
	Operating Expenses	28
	Operating Expenses by Department	28
	Personnel by Department	29
	Proposed Capital Budget	30
	About the CIP	32
	Five-Year Financial Plan	35
E	Budget by Department	37
	Executive	37
	Operations	38
	Power Services	39
	Finance	40

	Customer Operations	41
	IT and Data Analytics	42
	Public Affairs	43
	Programs	44
	Regulatory and Legislative Affairs	45
	Human Resources and Administration	46
	Legal	47
F	Budget by Level 2 and Level 3	49
Ī	Operating Revenue	49
	Cost of Energy	50
	Professional Services and Consultants	51
	Personnel Costs	52
	Marketing and Outreach	52 52
	General and Administration	53
	Programs	53
į		
L	Debt Financing	55
	Credit Facility	55
	Debt Considerations	55
F	Financial Policies	58
	Budget Policy	58
	Financial Reserves Policy	60
	Policy Guidelines	60
	Definitions	60
	Conditions for Use of Reserves	60
	Procurement Policy	61
	Debt Policy	64
	Investment Policy	72
	Rate Development Policy	82
(Glossary of Terms	85
E	Budget Resolution	93
Æ	Acknowledgments	95

List of Figures

FIGURE 1. CCAS IN CALIFORNIA	6
FIGURE 2. SAN DIEGO MAP IN SAN DIEGO COUNTY	7
FIGURE 3. SAN DIEGO COUNTY POPULATION	8
FIGURE 4. PARTICIPATION BY JURISDICTION	9
FIGURE 5. PARTICIPATION RATES ACROSS CCAS	9
FIGURE 6. COMMUNITY POWER MEMBER AGENCIES	9
FIGURE 7. ORGANIZATIONAL STRUCTURE	10
FIGURE 8. EXECUTIVE TEAM	10
FIGURE 9. TYPICAL ANNUAL BUDGET PROCESS	12
FIGURE 10. BUDGET CALENDAR	13
FIGURE 11. SAN DIEGO COMMUNITY POWER MISSION STATEMENT	14
FIGURE 12. SAN DIEGO COMMUNITY POWER VISION STATEMENT	16
FIGURES 13 & 14. SOCIAL MEDIA OUTREACH	17
FIGURES 15, 16 & 17. COMMUNITY OUTREACH AND EDUCATION	18
FIGURE 18. KEY DOCUMENTS PAGE ON WEBSITE	19
FIGURE 19. BUDGET STRUCTURE — DEPARTMENT HIERARCHY	20
FIGURE 20. BUDGET STRUCTURE — BUDGET LEVEL HIERARCHY	21
FIGURE 21. COMMUNITY POWER FUND STRUCTURE 23	
FIGURE 22. COMMUNITY POWER FUND AND BUDGET LEVEL HIERARCHY RELATIONSHIP	23
FIGURE 23. BUDGET PRINCIPLES	23
FIGURE 24. COMMUNITY POWER'S RATE PRODUCTS*	26
FIGURE 25. COMMUNITY POWER REVENUE TREND	27
FIGURE 26. COMMUNITY POWER'S DEPARTMENTS	30
FIGURE 27. CIP DEVELOPMENT PROCESS	32
FIGURE 28. OPERATING REVENUES VS. EXPENDITURES	34
FIGURE 29. OPERATING BUDGET	34
FIGURE 30. SAN DIEGO COMMUNITY POWER RESERVES	35
FIGURE 31. EXECUTIVE ORGANIZATIONAL STRUCTURE	37
FIGURE 32. OPERATIONS ORGANIZATIONAL STRUCTURE	38
FIGURE 33. POWER SERVICES ORGANIZATIONAL STRUCTURE	39
FIGURE 34. FINANCE ORGANIZATIONAL STRUCTURE	40
FIGURE 35. CUSTOMER OPERATIONS ORGANIZATIONAL STRUCTURE	41
FIGURE 36. IT AND DATA ANALYTICS ORGANIZATIONAL STRUCTURE	42
FIGURE 37. PUBLIC AFFAIRS ORGANIZATIONAL STRUCTURE	43
FIGURE 38. PROGRAMS ORGANIZATIONAL STRUCTURE	44
FIGURE 39. REGULATORY AND LEGISLATIVE AFFAIRS ORGANIZATIONAL STRUCTURE	45
FIGURE 40. HUMAN RESOURCES AND ADMINISTRATION ORGANIZATIONAL STRUCTURE	46
FIGURE 41. LEGAL ORGANIZATIONAL STRUCTURE	47
FIGURE 42. COMMUNITY POWER'S DEBT 2020–2024	56
FIGURE 43. COMMUNITY POWER'S DEBT BY MONTH	56

List of Tables

TABLE 1. OPERATING BUDGET OVERVIEW	25
TABLE 2. OPERATING REVENUE BY BUDGET LEVEL 2	27
TABLE 3. OPERATING EXPENSES BY BUDGET LEVEL 2	28
TABLE 4. OPERATING EXPENSES BY DEPARTMENT	28
TABLE 5. PERSONNEL BY DEPARTMENT	29
TABLE 6. FY 2025–2026 CAPITAL BUDGET OVERVIEW	30
TABLE 7. OPERATIONS POSITIONS	39
TABLE 8: POWER SERVICES POSITIONS	40
TABLE 9. FINANCE POSITIONS	41
TABLE 10. CUSTOMER OPERATIONS POSITIONS	43
TABLE 11. IT AND DATA ANALYTICS POSITIONS	44
TABLE 12. PUBLIC AFFAIRS POSITIONS	45
TABLE 13. PROGRAMS POSITIONS	46
TABLE 14. REGULATORY AND LEGISLATIVE AFFAIRS	47
TABLE 15. HUMAN RESOURCES & ADMINISTRATION POSITIONS	48
TABLE 16. LEGAL POSITIONS	49
TABLE 17. OPERATING REVENUE BY BUDGET LEVEL 2 AND LEVEL 3	51
TABLE 18. COST OF ENERGY BY BUDGET LEVEL 2 AND LEVEL 3	52
TABLE 19. PROFESSIONAL SERVICES AND CONSULTANTS BY BUDGET LEVEL 2 AND LEVEL 3	53
TABLE 20. PERSONNEL COSTS BY BUDGET LEVEL 2 AND LEVEL 3	54
TABLE 21. MARKETING AND OUTREACH BY BUDGET LEVEL 2 AND LEVEL 3	54
TABLE 22. GENERAL AND ADMINISTRATION BY BUDGET LEVEL 2 AND LEVEL 3	55
TABLE 23. PROGRAMS BY BUDGET LEVEL 2 AND LEVEL 3	55
TABLE 24. DEBT PAYMENTS	57

How to Use This Book

The San Diego Community Power (Community Power) Fiscal Year (FY) 2025–2026 operating budget contains agency budgetary and fiscal policy information as well as detailed operating budgets for agency divisions. The proposed operating budget is organized into the following sections:

Executive Summary

Includes the Chief Executive Officer's Letter and the Executive Summary of the proposed operating budget and provides a high-level overview of the agency's budget, the changes from the prior year and other high-level details on specific highlights and changes in the proposed operating budget.

Overview

Provides a high-level overview of Community Power's governance, structure and agency values and priorities.

Budget Process

Describes the various financial planning and budgeting processes and reports that inform the budget process.

Budget Overview

Describes the budget in brief, financial data summarizing Community Power's proposed budget, the Capital Investment Plan and the agency's five-year financial plan.

Budget Information and Summary Tables

Provides technical information on the structure, policies and processes that govern Community Power's budget development and implementation as well as high-level financial data summarizing Community Power's proposed

Operational Budgets

Provides budgetary information and operational priorities for each of Community Power's departments. Department information is organized alphabetically by division name and includes the following information:

Mission and Services

Department Highlights

Professional Services Agreement

Objective Key Results

Department Positions

Organizational Chart — depicts the department's organizational structure

Budget Data Summary – shows a summary of total expenditures and funded positions

Additional Resources

Provides additional information, including applicable Community Power policies as well as a glossary of commonly used terms.



A Letter from the Chief Executive Officer

At San Diego Community Power, we are shaping a future that is both sustainable and equitable. As a not-for-profit public agency and Community Choice Aggregator (CCA), we were created to bring competition to the local energy marketplace, offering cleaner energy at competitive rates and reinvesting revenues back into our communities.

Since launching in 2021, we've grown significantly in both reach and impact. In 2024, we remained focused on our mission: delivering reliable, clean power at competitive rates while advancing programs that make a tangible difference for our customers.

Affordability and long-term value remain central to our strategy. In February 2025, we reduced rates for the second year in a row — thanks to prudent financial planning and favorable market conditions — providing most customers with a discount compared with San Diego Gas & Electric's electricity generation rates.

Every decision we make, from lowering rates to expanding service options, is grounded in the needs of our customers and communities. Last summer, we introduced two new service options: Power100 Green+, for commercial customers seeking the highest level of renewable energy, and PowerBase, a more affordable option that still meets California's clean energy standards

Even as we deliver near-term savings, we continue to plan for long-term energy security and stability. The broader power market remains volatile, shaped by a constrained statewide resource supply and uncertain federal tax credit and trade policies. Our Power Services team is navigating these challenges through disciplined procurement and long-range planning.

To date, we've executed 17 long-term power purchase and energy storage agreements that will deliver reliable, renewable electricity to nearly 1 million homes and businesses across our region. These investments not only support our goal of 100% renewable energy by 2035, but also help insulate customers from future price spikes.

In 2024, we marked a major milestone with the ribbon cutting of the Vikings Solar and Storage Project in Imperial County. Developed by Arevon, with Community Power as the offtaker, Vikings is more than just a solar generation site. As one of the first utility-scale solar peaker plants in the United States, the project is designed to keep the lights on and costs down when demand is at its highest powering the equivalent of 50,000 San Diego homes with clean, affordable energy. It exemplifies our broader procurement strategy: securing long-term renewable power while creating local and regional economic opportunity.

In addition to expanding customer choice and value, we've made progress on delivering innovative solutions that support customers across the region. Last summer, we launched our largest customer program to date, Solar Battery Savings, which offers upfront and performance-based incentives for home battery systems that boost resilience and reduce grid demand during peak hours. The program was recognized in the U.S. Department of Energy's 2025 Virtual Power Plant Liftoff Report as a model for customer-centered innovation in distributed energy.

We also secured approval from the California Public Utilities Commission to launch the San Diego Regional Energy Network (SDREN) in partnership with the County of San Diego. SDREN will generate nearly \$125 million in energy efficiency resources for the region through 2027 and marks the final major population area in California to establish a Regional Energy Network.



As we grow, we're also investing in the internal systems and strategic planning necessary to scale effectively, operate efficiently and remain accountable to the public.

The FY 2025–2026 proposed budget reflects these priorities, with a focus on smart investment and sustainable growth:

- 1. Expanding Programs and Incentives Scaling Solar Battery Savings and launching the SDREN portfolio to support clean energy adoption, equity and resilience
- 2. Capital Investment Planning Advancing our Capital Investment Plan to guide infrastructure development and ensure transparency
- **3.** Stable, Competitive Rates Maintaining affordability through disciplined operations, long-term procurement and financial foresight
- 4. Customer-Centered Services Deepening engagement, broadening access and tailoring offerings to meet diverse community needs
- 5. Organizational Sustainability Strengthening our internal capacity to support longterm strategy and service delivery
- **6.** Fiscal Sustainability Continuing to work toward our reserves goals to ensure longterm financial strength

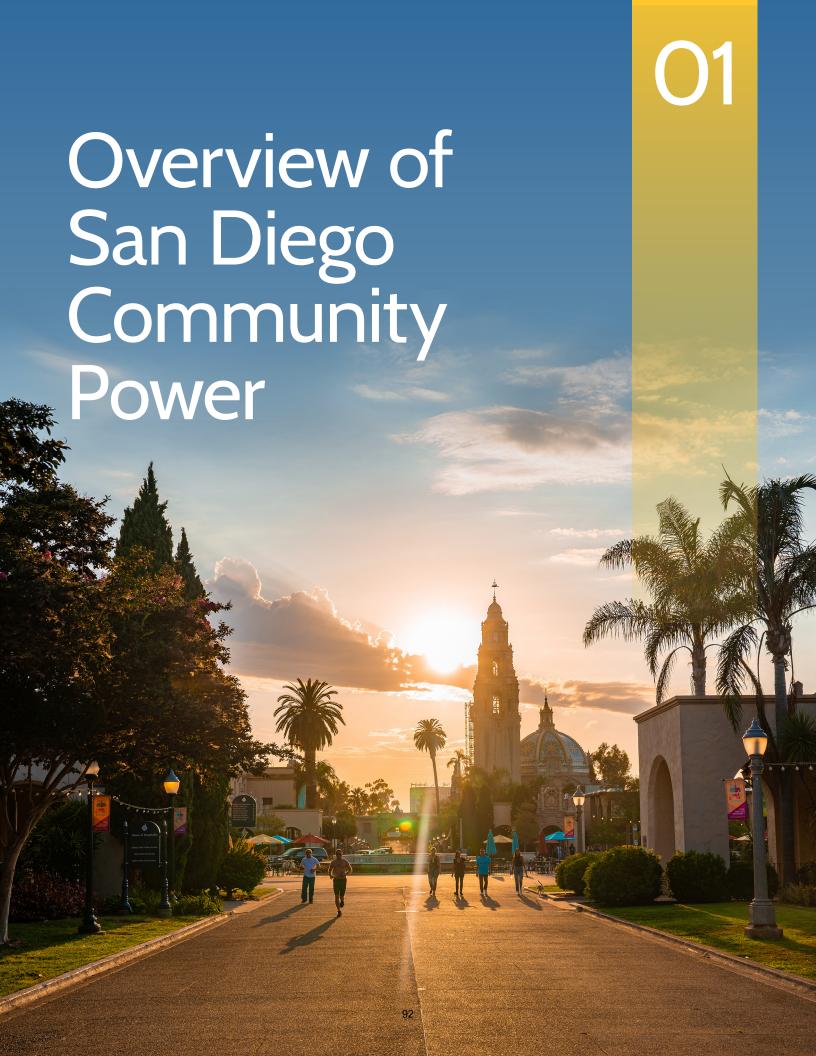
As we look ahead, our focus remains on driving measurable impact: accelerating the region's clean energy transition, supporting local climate goals and building a more just and resilient energy system. With the continued leadership of our Board of Directors, Community Advisory Committee and dedicated staff, San Diego Community Power is proud to power the path toward a cleaner, more resilient future — together.

Thank you for your continued trust and partnership.

Chief Executive Officer

Karin Burns

San Diego Community Power



Overview of San Diego Community Power

Who We Are

San Diego Community Power is a Community Choice Aggregator (CCA) that gives customers an option to power their homes and businesses with significantly higher levels of renewable power at competitive rates. Since 2021, Community Power has grown to serve nearly 1 million residential, business and municipal power customers in the cities of San Diego, Chula Vista, Encinitas, Imperial Beach, La Mesa and National City as well as the unincorporated communities of San Diego County.

Community Power is a not-for-profit public agency that provides affordable clean energy and invests in its local communities to create an equitable and sustainable future for the San Diego region.

Learn more at www.sdcommunitypower.org.

Our Story

With support from local communities, Community Power was established as a Joint Powers Authority by five cities within the San Diego region. Community Power submitted an implementation plan to the California Public Utilities Commission, outlining the intended organizational structure, operations and funding. Once approved, our Board of Directors began to meet regularly, and implementation activities began. In 2020, a sixth city and the County of San Diego elected to join Community Power.

Community Power serves nearly 1 million customers with competitively priced clean energy; we are beginning to offer customer programs and rebates as well as supporting San Diego County's energy efficiency goals through the San Diego Regional Energy Network (SDREN).



About Community Choice

San Diego Community Power is a Community Choice Aggregator (CCA) — one of dozens that have formed throughout California over the past 20 years. There are currently 25 CCAs serving over 14 million customers in California.

Through CCAs, communities can join together to pool (or aggregate) their electricity load in order to purchase clean energy and develop local clean energy projects and programs on behalf of their residents and businesses. CCAs like Community Power work in partnership with the region's existing investor-owned utilities (SDG&E in our case), which continue to deliver power and maintain the grid.

How It Works



CCAs are making good on their commitments to invest in new renewable energy facilities throughout California. To date, CCAs have contracted for more than 18,000 megawatts (MW) of new clean generation capacity through long-term power purchase agreements (PPAs) with terms of 10 years or more. CCA PPAs equate to:

- More than 18 gigawatts (GW) of new solar, wind, energy storage, geothermal and demand response resources
- Projects totaling more than 7,900 MW that are already operational and serving CCA customers
- More than \$37 billion committed by CCAs to build and operate clean energy resources
- Support for more than 36,000 construction jobs

FIGURE 1. CCAS IN CALIFORNIA

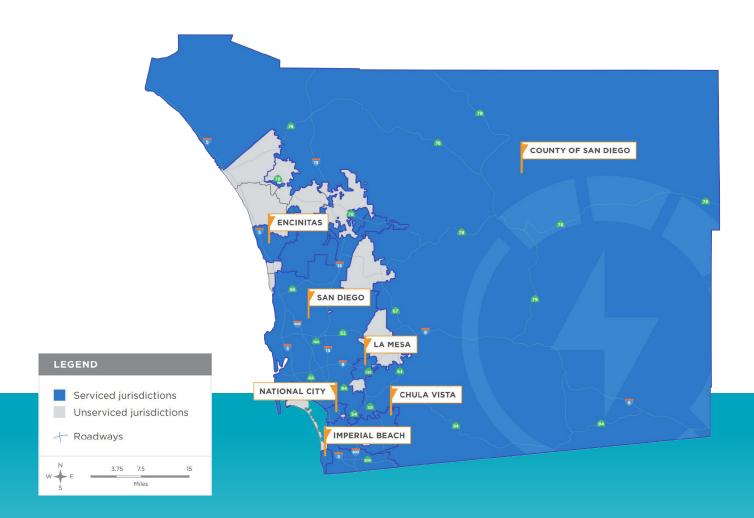




Serviced Communities

FIGURE 2. SAN DIEGO MAP IN SAN DIEGO COUNTY

SERVICE AREA MAP



County Population

San Diego County is the southernmost major metropolitan area in California and boasts a diverse and vibrant population. According to the State of California Department of Finance, as of May 2022, San Diego County's estimated population on January 1, 2022, stood at 3.29 million. This figure represents a decline of 0.85% (approximately 28,000 individuals) from the January 1, 2021, estimates reported in May 2021. San Diego County ranks as the second-largest California county by population and the fifth-largest county nationwide. These rankings are based on data from the U.S. Census Bureau, which relies on the 2021 population estimate. Looking ahead, population estimates from the San Diego

Association of Governments (SANDAG) project significant growth. By the year 2035, the San Diego regional population is expected to reach approximately 3.62 million, reflecting a substantial 28.7% increase compared to the year 2000, or a 10.1% increase compared to the year 2022.

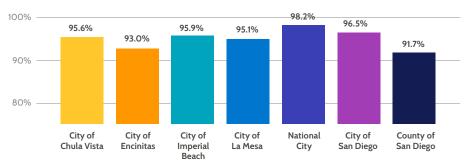
FIGURE 3. SAN DIEGO COUNTY POPULATION

San Diego County Population						
COUNTY/CITY	4/1/2020	1/1/2021	1/1/2022	1/1/2023	1/1/2024	
San Diego County						
Carlsbad	115,029	115,373	115,033	115,045	114,319	
Chula Vista	275,127	275,498	275,427	276,813	278,247	
Coronado	23,504	22,415	22,082	22,272	21,589	
Del Mar	3,951	3,927	3,909	3,918	3,919	
El Cajon	106,321	106,112	105,171	104,804	104,180	
Encinitas	61,506	61,593	61,283	61,254	61,028	
Escondido	151,289	151,371	150,419	150,571	150,002	
Imperial Beach	26,577	26,336	26,163	26,109	26,096	
La Mesa	60,637	60,620	60,412	60,753	60,620	
Lemon Grove	27,386	27,333	27,109	27,517	27,568	
National City	58,643	58,524	58,545	58,374	58,555	
Oceanside	173,283	173,354	172,463	172,186	171,483	
Poway	48,781	48,637	48,515	48,620	49,273	
San Diego	1,383,020	1,377,960	1,375,687	1,383,623	1,385,379	
San Marcos	94,287	93,456	93,851	94,823	95,998	
Santee	59,654	59,140	58,886	59,574	59,195	
Solana Beach	12,931	12,890	12,792	12,831	12,887	
Vista	98,690	99,320	99,997	100,113	99,723	
Balance of County	518,018	513,021	510,986	511,223	511,040	
Incorporated	2,780,616	2,773.859	2,767,744	2,779,200	2,780,061	
County Total	3,298,634	3,286,880	3,278,730	3,290,423	3,291,101	

Source: U.S. Census, 2010 data; California Department of Finance 2021 estimates as of May 2, 2021, and May 2, 2024.

Participation by Jurisdiction

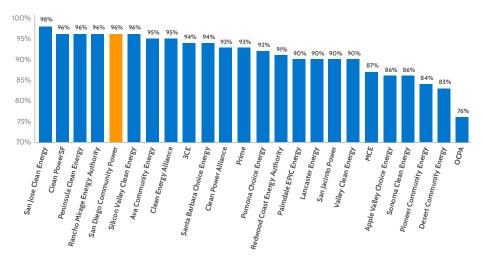
FIGURE 4. PARTICIPATION BY JURISDICTION



JURISDICTION	SERVICE OPTION DEFAULT	ELIGIBLE ACCOUNTS	ENROLLED ACCOUNTS	PARTICIPATION RATE
City of Chula Vista	PowerOn	98,635	94,255	95.6%
City of Encinitas	Power100	28,804	26,792	93%
City of Imperial Beach	PowerOn	10,852	10,403	95.9%
City of La Mesa	PowerOn	29,514	28,066	95.1%
National City	PowerOn	19,431	19,085	98.2%
City of San Diego	PowerOn	624,704	603,071	96.5%
County of San Diego	PowerOn	190,214	174,419	91.7%
Total		1,002,154	956,091	95.4%

Participation Rates Across CCAs

FIGURE 5. PARTICIPATION RATES ACROSS CCAS



Source: https://cal-cca.org/. Current as of December 2023.

FIGURE 6. COMMUNITY POWER MEMBER AGENCIES















Governance and Structure

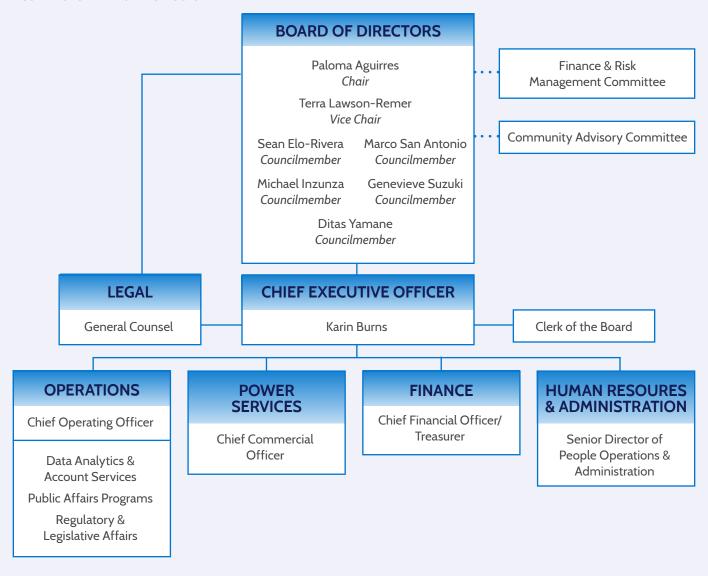
In September 2019, the cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa adopted an ordinance and resolution to form San Diego Community Power, a California Joint Powers Authority (JPA). In 2021, National City and the County of San Diego voted to join Community Power.

Community Power's Board of Directors is composed of an elected representative from each member jurisdiction, with each member having an alternate from the agency they represent. The Board is publicly accountable to Community Power ratepayers and hosts monthly Board meetings, where it establishes policy, sets rates, determines power purchase options and maintains fiscal oversight.

As a public agency, Community Power is designed to be fully transparent with all official meetings and information open or available to the public.

Organizational Structure

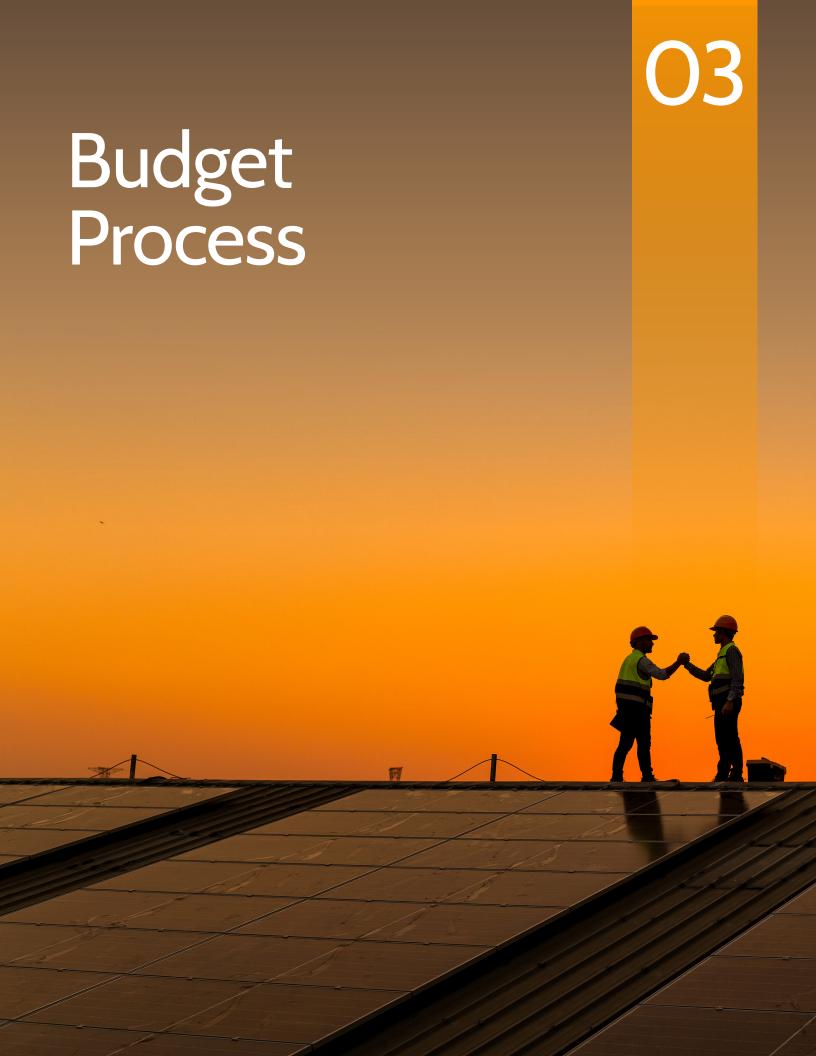
FIGURE 7. ORGANIZATIONAL STRUCTURE



Executive Team

FIGURE 8. EXECUTIVE TEAM





Budget Process

Annual Budget Cycle

On October 1, 2019, the Founding Members of San Diego Community Power 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 Community Power Board of Directors (Board) shall adopt an annual budget prior to the commencement of the fiscal year. The JPA further provides that Community Power's fiscal year runs from July 1 to June 30, unless changed by the Board. Section 7.3.1 of the JPA additionally specifies that the Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses.

The Community Power Boards adopted the Community
Power Budget Policy on July 28, 2022, which formally
outlined the agency's budget preparation steps and timeline.
The chief financial officer (CFO) begins the annual budget
process in February of each year. The Finance Department
develops initial revenue and expense estimates and updates

MAR

its short-term financial plan. In March and April, Community Power staff develops and refines budget proposals in order to develop an initial budget baseline for the Agency's upcoming budget year. The budget is further refined through strategic planning sessions and through the Community Power Finance and Risk Management Committee (FRMC).

The CFO is then required to prepare and submit to the Board a draft proposed budget for the next following fiscal year in May or no later than the second month immediately preceding the start of the respective fiscal year. The budget shall be in alignment with established goals and shall reflect all activities including operating programs, revenues and expenditures. The budget shall be approved by the Board at a public meeting in June or no later than the month immediately preceding the start of the respective fiscal year.

FIGURE 9. TYPICAL ANNUAL BUDGET PROCESS



Budget Calendar

FIGURE 10. BUDGET CALENDAR

DATE	MILESTONE
January 2025	Finance Department prepares for February launch of the annual budget cycle.
February 2025	Budget process begins. Initial revenue and expense estimates are developed.
March to April 2025	Departments propose unconstrained expense requests for review.
April 2025	Staff sets initial budget baseline.
May 22, 2025	FY 2025–2026 budget is reviewed by the Board of Directors as an information item.
June 12, 2025	Community Advisory Committee reviews the FY 2025–2026 budget and provides feedback.
June 12, 2025	Finance and Risk Management Committee reviews the FY 2025–2026 budget and provides final feedback.
June 26, 2025	FY 2025–2026 budget is potentially adopted by the Board of Directors as an action item.
July 1, 2025	FY 2025–2026 budget is implemented.

Strategic Planning

San Diego Community Power's budgeting process is directly informed by its Strategic Plan - a document co-created by our Board, our CAC, our executives and our team — that translates community priorities into actionable goals. The Strategic Plan is a critical management tool, helping to align resources, guide operational decisions and drive long-term organizational focus across every department and initiative.

Now three years into our first strategic planning cycle, Community Power has reached a pivotal inflection point. Since the adoption of our 2023–2027 Strategic Plan in June 2022 and its subsequent update in April 2023, we've achieved many of the ambitious goals we set, made meaningful progress on others and thoughtfully recalibrated where needed. From October 2024 to March of 2025 we embarked on a revision and update to our strategic plan, setting aggressive new goals while continuing to focus our efforts, build our organization and deliver on the promise of community choice.

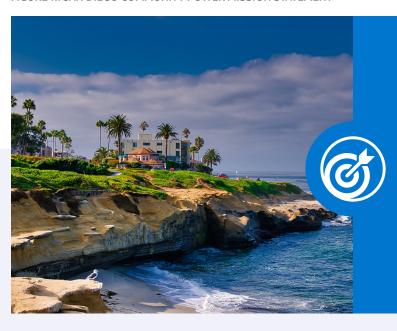
What hasn't changed is our mission, vision and core values. These foundational statements continue to guide our work even as we refine our priorities and strategies to reflect new opportunities, challenges and lessons learned. With our team, customer base and clean energy infrastructure

significantly expanded, we now turn toward a new two- to three-year horizon — one defined by sustained growth, increased financial responsibility and a deeper investment in the people and systems that power our organization.

As we evolve, we continue to ask a simple but powerful question: Does this activity serve our purpose? Every program, investment and initiative we pursue should answer "yes" to at least one of the following:

- Does it make energy more affordable for our customers?
- · Does it make things easier for our customers?
- Does it make our energy more renewable?
- Does it maintain or improve the health of our organization?
- · Does it build trust with our communities, stakeholders and local governments?

These questions — and the values underlying them — serve as a filter and a guidepost, helping to ensure that our Strategic Plan remains grounded in what matters most to our customers and communities.



Mission Statement

To provide affordable clean energy and invest in the community to create an equitable and sustainable future for the San Diego region.

As part of this new planning phase, Community Power has identified four overarching themes to guide our work:



Fiscal Sustainability

We remain committed to building strong financial reserves, managing risk and pursuing strategies like clean energy prepay transactions that can reduce long-term costs for customers.



Infrastructure Investment

This includes both internal infrastructure, such as IT, legal, data and policy capacity, and external infrastructure, including local battery storage, distributed energy resources and virtual power plant development.



Customer Affordability

Affordability remains the top concern voiced by our community and is front of mind with every power purchase, financial hedge, compliance obligation or additional long-term power resource we contract with to support our short- and long-term procurement efforts. Our additional activities - ranging from the development of targeted rates like PowerBase to launching the San Diego Regional Energy Network — will continue to focus on reducing energy bills while meeting state policy goals.



People

As we grow, so does our responsibility to ensure a resilient and inclusive workplace culture. We are investing in management training, professional development and succession planning to ensure strong continuity and a high level of staff retention.

Together, these priorities inform the structure of our proposed FY 2025–2026 budget and the evolution of our Strategic Plan. That work is organized around seven long-term Strategic Goals that anchor the agency's planning and performance management. These goals guide not only how we invest our resources but also how we measure our progress as a public agency accountable to the communities we serve.

Core Strategic Goals

1. Fiscal Sustainability

Practice fiscal strategies to promote long-term organizational sustainability.

- Execute at least six clean prepayment transactions over the next three years to generate \$30 million in annual power cost savings.
- Obtain a public investment-grade credit rating by November 2027.
- · Grow reserves by \$150 million to maintain 180 days' cash on hand by December 2027.
- Build a \$70 million Rate Stabilization Reserve to mitigate cost volatility.
- · Strengthen financial controls across contracting, risk management and procurement.

2. Energy Portfolio Development

Provide sufficient, affordable and clean electricity to our customers.

- Reach 100% renewable energy by 2035 with interim goals of 75% by 2027 and 85% by 2030.
- · Support development of 1 gigawatt of new local clean energy capacity by 2035, including 300 MW of infill and distributed energy resources (DERs).
- Ensure reliable and cost-effective compliance with all regulatory requirements.
- Create good-paying local jobs in clean energy sectors.

3. Community Program Delivery

Implement programs that reduce greenhouse gas emissions, align energy supply and demand and benefit our diverse communities.

- Deliver 150 MW of local DER capacity (of the 300 MW total goal) by 2035 through programs like Solar Battery Savings.
- Launch all San Diego Regional Energy Network (SDREN) programs by FY 2026.
- Implement a robust program evaluation framework by FY 2026.
- · Expand external funding for clean energy programs.

4. Legislative and Regulatory Advocacy

Advance policies that support Community Power's mission and customer goals.

- · Educate policymakers and regulators to influence outcomes consistent with our policy platform.
- · Support and sponsor legislation aligned with our values and needs.

- · Remain an active participant in coalitions such as CalCCA to amplify our voice.
- · Strategically pursue public funding aligned with agency goals.

5. Trusted Brand Building

Build a trusted brand that supports engagement, participation and program success.

- · Position San Diego Community Power as a collaborative public agency rooted in transparency.
- · Grow the Power Network of nonprofit and communitybased partners to expand community reach.
- · Elevate brand awareness through education and outreach.
- · Empower customers to take advantage of savings and services through awareness, education and ongoing communication programs.

6. Customer Care

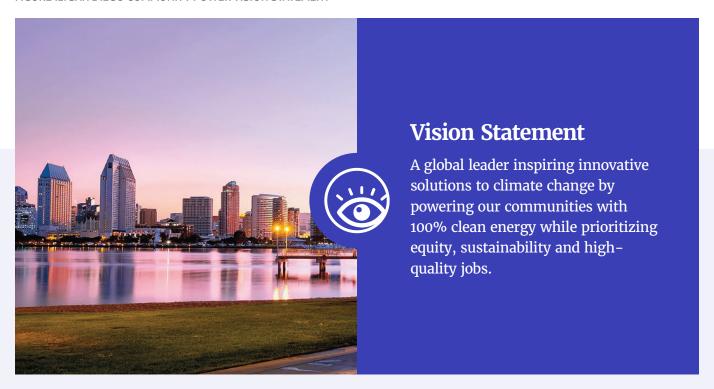
Ensure high customer satisfaction and retention.

- Refine rate structures to balance affordability, clean energy and fiscal prudence.
- Resolve SDG&E billing issues and improve customer experience.
- · Explore options for a best-in-class customer service model.
- · Address arrearages and connect customers to available resources.

7. Organizational Excellence

Foster an innovative, inclusive and resilient workplace.

- Transition into a learning organization by late 2026 with robust staff development.
- Maintain a high level of employee satisfaction through engagement and continuous feedback.
- · Launch a new internship program for local college students by FY 2027.



Core Strategic Goals



Community Outreach Strategy

As a public agency with a deep commitment to transparency and community accountability, San Diego Community Power approaches outreach not as a one-time event, but as a continuous, year-round effort. Our budget process is informed by this ongoing engagement with customers, stakeholders and local leaders, ensuring our financial planning reflects the needs and priorities of the people we serve.

Public Meetings and Oversight

Core to our transparency is the public nature of our governance. Per our **Rate Development Policy**, rate setting is done via a public process, developed by staff and ultimately approved by our Board of Directors (Board) — all through open meetings where the public is invited to participate. Our Board is publicly accountable to Community Power ratepayers and hosts monthly Board meetings, where it not only sets rates, but also establishes policy, determines power options and maintains fiscal oversight. Similarly, our Board is informed by a subset of members on the Finance and Risk Management Committee (FRMC), and the Community Advisory Committee (CAC) advises the Board and provides a venue for ongoing citizen support and engagement in Community Power. These monthly public forums offer meaningful opportunities for community input and serve as a foundation for budget development and agency decision-making.

Customer Notices and Transparency Tools

We also ensure customers have access to clear and timely information about their energy service. The annual Joint Rate Comparison — published in coordination with SDG&E - provides side-by-side rate and service comparisons to help customers make informed choices. Similarly, our Power Content Label offers a breakdown of the energy sources we procure on behalf of our customers, highlighting our commitment to cleaner energy and sustainability.

Our website is another key transparency tool, offering customers easy access to rate options, program details, meeting materials and more. Specifically, the bill comparison calculator offers customers an opportunity to evaluate Community Power rates alongside those of SDG&E. As part of our continued commitment to improving the customer experience, we are currently undertaking a website redesign to make resources easier to find, understand and apply.

Targeted Outreach and Engagement

Beyond formal governance, Community Power regularly provides updates to our member agencies and their elected





FIGURES 13 & 14. SOCIAL MEDIA OUTREACH

bodies, including 2025 updates, which are currently underway. These presentations offer a transparent look at our progress, priorities and evolving initiatives.

We also continue to expand and refine our outreach efforts across the service territory to engage more residents and businesses. In 2024 alone, Community Power participated in more than 151 community events, resulting in 18,539 unique interactions with the public through in-person engagement. These efforts are bolstered by strategic partnerships, sponsorships and targeted media outreach, including our ongoing partnership with CBS 8's "Working for Our Communities" campaign, which helps us reach new audiences and share critical information about our programs and services.

Our quarterly newsletter provides regular updates on new initiatives, energy-saving tips and agency milestones. One of our more impactful recent engagement efforts has been the launch of a comprehensive customer feedback survey as part of our brand refresh and website redesign. This survey invites customers to share their priorities, service expectations and clean energy goals - insights that will help shape future programs and guide long-term planning.

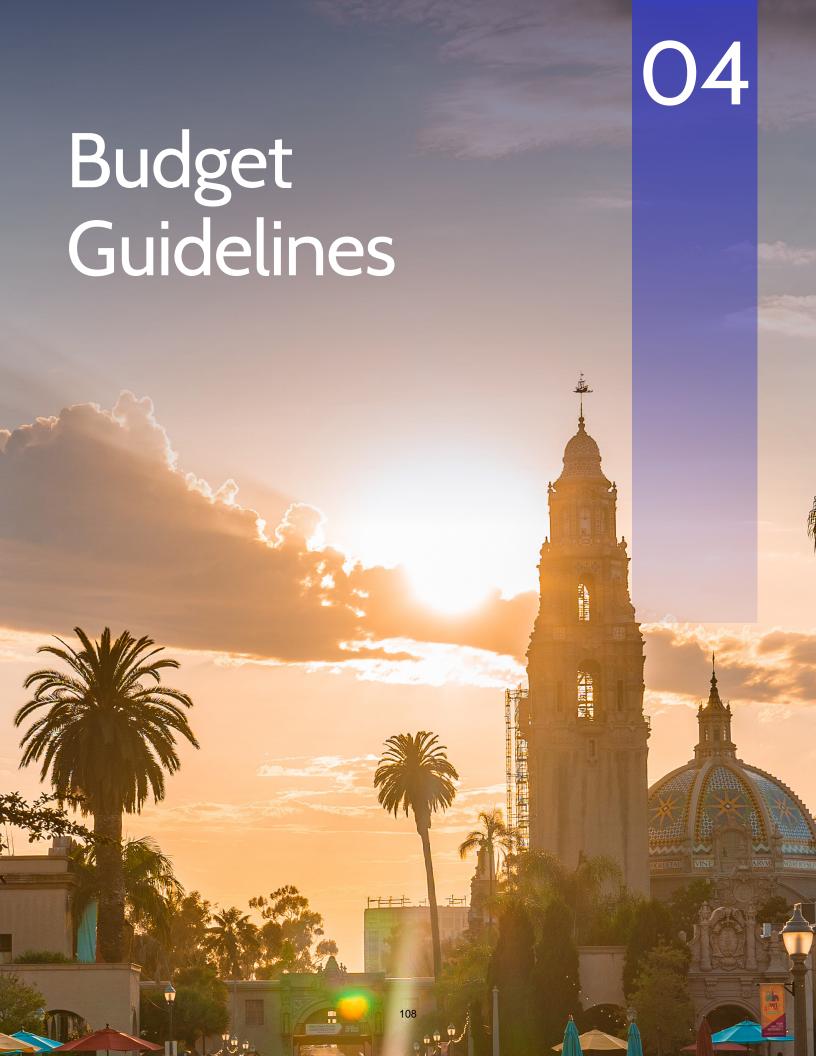
Together, these efforts create a strong feedback loop between our agency and the public, ensuring our budget reflects both fiscal responsibility and community values and that every customer has a voice in building a clean, affordable and equitable energy future for our region.

FIGURES 15, 16 & 17. COMMUNITY OUTREACH AND EDUCATION









Budget Guidelines

Joint Powers Agreement

On October 1, 2019, the Founding Members of Community Power adopted the Joint Powers Agreement (JPA), which was amended and restated on December 16, 2021. Several sections of the JPA guide the development and management of the budget.

Section 4.6 Specific Responsibilities of the Board. The specific responsibilities of the Board of Directors (Board) shall be as follows:

4.6.2 Formulate and adopt an annual budget prior to the commencement of the fiscal year.

Section 7.2 Depository

7.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its policies and procedures.

Section 7.3 Budget and Recovery Costs

7.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of Community Power shall be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval. Section 4.6.2 of the JPA specifies that the Community Power Board shall adopt an annual budget with a fiscal year that runs from July 1 to June 30.

On July 28, 2022, the Community Power Board adopted the Community Power Budget Policy, which outlined the timeline for annual budget preparation and for discretionary budget adjustments. This Policy was adopted pursuant to Government Code Section 6508 et seg.

Budget Policy

Discretionary Budget Adjustments. The CEO or CFO will have the discretion to authorize expense transfers from line items between and within Community Power's Budget Level 2 categories as established and approved in the annual budget process by the Community Power Board, provided that net transfers total \$150,000 or less from the budget category.

The CEO under his or her discretion may still require approval of the Board for any budget changes that may fall under the discretion of the Policy. Amendments to the annual budget as approved by the Board will reset the original appropriation (revenue or expense) for the fiscal year for the purposes of the Policy.

A budget amendment is expected to occur in February of each calendar year to adjust the original appropriation as necessary and in alignment with Community Power's rate-setting policy in which Community Power's rates are expected to be adjusted in January, the month prior.

Balanced Budget. A balanced budget shall exist when the total projected revenues are greater than or equal to total projected expenses. Total revenues shall include all revenues from retail and wholesale sales of electricity. Total expenses shall include all operating expenses, program expenses, and contributions to reserve funds. Any year-end surplus will be used to maintain reserve levels. Any decrease in revenues and or increase in expenditures that causes the budget to become imbalanced will require an amended budget. The CFO shall prepare a proposed amended budget and submit to the Board for approval.

The Agency also maintains several policies posted to its **Key Documents** page on its website that provide further fiscal guidance.

- Budget Policy
- Financial Reserves Policy
- · Procurement Policy
- Debt Policy
- · Investment Policy
- Rate Development Policy

Other related policies that may directly affect Community Power's finances include:

- Energy Risk Management Policy
- Delegated Contract Authority
- Total Compensation Policy
- Board and Committee Compensation Reimbursement Policy
- · Net Energy Metering (NEM) Program Policy
- Sponsorship Policy
- · Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) Tariff Terms and Conditions of Service+
- Net Billing Tariff (NBT)
- Collections and Delinquent Accounts Policy
- · Member Agency Grant Program Policy

FIGURE 18. **KEY DOCUMENTS** PAGE ON WEBSITE



Budget Structure

Community Power's basis of budgeting is the accrual method. This method means planning that includes revenues and expenses in the budget of the year in which the underlying economic events are expected to occur, not necessarily in the year in which the related cash is expected to be received or paid.

Community Power's basis of accounting, similarly, in its financial statements is as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

Department Hierarchy

Community Power's budget is developed as a line-item budget and is organized by department to indicate the agency's organizational responsibility.

FIGURE 19. BUDGET STRUCTURE — DEPARTMENT HIERARCHY

DEPARTMENT

Executive Finance **Power Services** Legal

Human Resources and Administration Operations

Data Analytics & Customer Operations **Public Affairs Programs** Regulatory & Legislative Affairs

Budget Level Hierarchy

Additionally and separately, the budget is also organized by budget levels to organize expenses into relevant, related categories.

1. Operating Revenues

For the first time since conception, Operating Revenues allow for revenues from sales of electricity to customers completed. Assumptions include an overall 5% opt-out rate.

2. Operating Expenses

Community Power's operating expenses fall into five categories: cost of energy, personnel costs, professional services and consultants, marketing and outreach, and general and administration.

- I. Cost of Energy Includes all the various services purchased from the power market through our suppliers to supply energy to Community Power's customers.
- II. Personnel Includes salaries, payroll taxes, benefits, and excused absence and paid time off for staff. The recruitment strategy includes the addition of approximately seven new staff members during the FY 2025-2026 budget cycle.
- III. Professional services and consultants Includes SDG&E billing service 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. Funding is also included for a program consultant to guide future program investments in the community. Professional services and consultants are further broken down into these Budget Level 3 categories:
 - a. Data Management
 - b. SDG&E Fees
 - c. Technical Support
 - d. Legal/Regulatory
 - e. Other Services
 - f. Programs Consultants
- IV. Marketing and Outreach Includes expenses for mandatory enrollment notices, communication consultants, mailers, printing, sponsorships, and partnerships to inform the community of Community Power. Marketing and outreach are further broken down into these Budget Level 3 categories:
 - a. Printing
 - b. Sponsorships and Local Memberships
 - c. Communications Consultants

- V. **General and Administration** Costs include leasing office space, industry fees or memberships (e.g., bank fees, CalCCA dues), equipment and software as well as other general operational costs including Board and Committee expenses, Board stipends, staff travel or professional development, logo gear, and team building.
- VI. Programs Includes funding to support initial pilot programs, grants to community organizations, investments that generate equitable energy-related benefits, education campaigns, opportunities for increased collaboration with member agencies and funding for a potential new CPUC energy-efficiency program.

3. Non-Operating Expenses

Community Power's budget also includes non-operating expenses related to interest and related expenses used to finance its operations. These costs comprise repayment of loan principal associated interest costs as well as potential renewal fees on debt or letters of credit.

4. Capital Investment Plan (CIP)

Community Power's budget also includes non-operating expenses related to a Capital Investment Plan. These expenses may be paid with internal or external fund sources and are considered one-time projects or programs. The first year of the CIP is the agency's capital budget.

FIGURE 20. BUDGET STRUCTURE — BUDGET LEVEL HIERARCHY

BUDGET LEVEL 1

Revenue

Revenue

Operating Expenses

Non-Operating Expenses

CIP

BUDGET LEVEL2

Gross Ratepayer Revenues (Less 1.75% Uncollectible Customer Accounts)

Cost of Energy

Personnel Costs

Personnel Costs

Personnel Costs

Personnel Costs

Professional Services and Consultants Professional Services and Consultants **Professional Services and Consultants** Professional Services and Consultants

Professional Services and Consultants

Professional Services and Consultants

Professional Services and Consultants

Marketing and Outreach

Marketing and Outreach

Marketing and Outreach

General and Administration

General and Administration

General and Administration

General and Administration

Programs

Debt Service

CIP

BUDGET LEVEL 3

Gross Ratepayer Revenues (Less 1.75% Uncollectible Customer Accounts)

Cost of Energy

Salaries

Benefits (retirement/health)

Payroll Taxes

Accrued PTO

Legal/Regulatory

Technical Support

Programs Consultant

Other Services

SDG&E Fees

Data Management

Contingency

Communications Consultants

Printing

Sponsorships/Local Memberships

CalCCA Dues

Insurance

Rent

Other G & A

Programs

Interest and Related Expenses

CIP

Fund Structure

A fund is defined as a separate accounting entity with a self-balancing set of accounts recording cash and other financial resources together with related liabilities. Each fund was established for the purpose of accounting for specific activities in accordance with applicable regulations, restrictions or limitations. Community Power has two types of funds:

1. Operating Fund – Accounts for activities that are supported by ratepayer funds. All of Community Power's general operating activities are included in the Operating Fund, which functions very similarly to the enterprise fund of a city or county. The Operating Fund is the primary fund of Community Power and is considered an annual fund in which all unused funds at the end of a fiscal year revert to the agency's fund balance.

The only source for the Operating Fund is from ratepayer funding. Community Power believes strongly in maintaining a structurally balanced budget in which all ongoing operating activities are supported only by stable, ongoing revenue such as ratepayer funding.

Community Power offers four service levels to its customers that, taken together, ultimately comprise the source of ratepayer funds for the agency:

- 1. PowerOn, our standard service offering that provides 55% renewable power (and 11.7% carbon free) and provides a 3% discount compared with SDG&E's rates
- 2. Power100, our premium service that provides customers with 100% renewable and carbon-free energy and is currently priced at a \$0.01/kWh added to the PowerOn service
- 3. Power100 Green+, our stand-alone 100% renewable and carbon-free service that is Green-e® certified, available only to commercial and industrial customers and currently priced at a \$0.02/kWh adder to the PowerOn service
- 4. PowerBase, our most affordable service option with renewable content that is intended to meet or exceed that of SDG&E whenever possible and provides customers with a 5% discount compared with SDG&E's rates currently in effect as of February 1, 2025
- **2. Continuing Fund** Accounts for one-time activities in Community Power's Capital Investment Plan and that are supported by one-time funds. The Continuing Fund is considered a continuing fund in

which all unused funds at the end of the fiscal year continue to the next fiscal year. This fund is used to account for and report financial resources that are restricted, committed or assigned to expenditure for governmental capital assets or other one-time efforts.

Community Power's Continuing Fund is composed of the following revenue sources:

- Community Power Operating Transfers Through the annual budget process, the Community Power Board may approve an appropriation of funds to be transferred out of the operating budget and transferred into the CIP. These funds will remain in a Community Power continuing fund to be used across multiple fiscal years given that CIP projects generally last longer than one year.
- · California Public Utilities Commission (CPUC) DAC-GT - The Disadvantaged Communities Green Tariff DAC-GT program enables income-qualified, residential customers in DACs who may be unable to install solar on their roof to benefit from utility-scale clean energy and receive a 20% bill discount. Funding originates from state Greenhouse Gas (GHG) Auction Proceeds and Public Purpose Program funds.
- CPUC Regional Energy Network (REN) Public Purpose Program Surcharge funds are available for RENs. On August 7, 2024, the CPUC issued Decision 24-08-003, which approved and authorized Community Power's San Diego Regional Energy Network (SDREN) as a new Energy Efficiency Portfolio Administrator. This decision approved Community Power's application in its entirety, including 2024–2027 energy savings goals and funding, as well as a 2024–2031 Strategic Business Plan. SDREN will offer 10 energy-efficiency programs across San Diego County. These programs will be available, regardless of service provider and will focus on achieving energy savings, reducing emissions, enhancing grid reliability and educating customers on how to reduce energy usage.
- · California Department of Food and Agriculture (CDFA) Healthy Refrigeration Grant — The CDFA notified Community Power that it was awarded partial funding in the amount of \$710,000 to support Community Power in providing technical assistance and refrigeration units to stock healthy foods at stores throughout Community Power's service territory.

FIGURE 21.

COMMUNITY POWER FUND STRUCTURE

FIGURE 22.

COMMUNITY POWER FUND AND BUDGET LEVEL HIERARCHY RELATIONSHIP

FUND STRUCTURE

Operating Fund Continuing Fund

FUND STRUCTURE

Operating Fund Operating Fund Operating Fund Continuing Fund Continuing Fund

BUDGET LEVEL 1

Operating Revenue **Operating Expenses Non-Operating Expenses** CIP Revenue **CIP Expenses**

FY 2025-2026 Budget Principles



Fiscal Responsibility

Maintain a fiscally responsible budget in accordance with Community Power Budget Policy.

Sufficient Funding

Ensure sufficient funding to meet procurement needs, sustain operational needs and support sustained growth while delivering clean energy to the communities we serve.

Build Community Power Reserves

Build Community Power reserves and develop policies that consider future economic conditions.

Understandable and Transparent

Provide an understandable and transparent operating budget for internal and external users.

People and Community

Develop a budget that will ultimately prioritize people and our communities.

Informed

Keep the Community Power Board of Directors and staff informed of Community Power's fiscal condition.



Budget Overview

Budget in Brief

The proposed FY 2025–2026 Operating Budget is the second full fiscal year of full enrollment from Community Power's member jurisdictions, inclusive of net-energy metering customers, within the San Diego region. This budget therefore provides the second year of representation in anticipated full revenues and expenses, moving forward.

As Community Power has scaled to full enrollment, the agency has thoughtfully grown to 87 staff in the current fiscal year. Total staffing for the FY 2025-2026 period includes eight positions that are externally funded and in the Capital Investment Plan (CIP), and 86 positions supporting core operations. By the end of FY 2025-2026, Community Power is expected to have a similar operating budget and staffing levels compared to its peer CCAs of similar customer and load size. Additionally, by the end of FY 2025-2026, Community Power is likely to achieve its strategic goal of having 180 days' cash on hand, which will equip Community Power to earn and maintain a credit rating. This can translate to Community Power being better positioned to negotiate

and secure better and more favorable terms in our Power Purchase Agreements that can help reduce electricity rates for customers in the long term while also protecting the long-term solvency of Community Power. Given the positive financial landscape, Community Power expects to maintain minimal, if any, debt during the fiscal year and does not anticipate needing to use its credit facility to finance operations in FY 2025-2026.

The Proposed FY 2025-2026 Operating Budget furthermore includes continued outreach through community events, sponsorships and advertising to inform customers about Community Power.

Lastly, this budget continues to include a CIP that shifts onetime revenue and one-time expenses from programs and projects over multi-year periods from the operating budget to the CIP.

Proposed Operating Budget

The Community Power FY 2025–2026 Proposed Operating Budget is presented in further detail in the following pages. The table below summarizes the revenue and expense budgets proposed for FY26 in comparison to the FY25 and FY24 Amended Budgets.

TABLE 1. OPERATING BUDGET OVERVIEW*

	FY24 Amended	FY25 Amended	FY26 Proposed
Gross Revenue	1,365.7	1,233.4	1,221.0
Less Uncollectible Accounts	(61.4)	(54.5)	(21.4)
Net Operating Revenues	1,304.3	1,177.9	1,199.6
Cost of Energy	1,020.8	1,073.7	956.7
Non-Energy Costs	43.8	53.8	54.3
Subtotal Operating Expense	1,064.6	1,127.5	1,010.9
Debt Service	2.4	1.3	1.9
Capital Investment Program (Transfer Out)	4.7	15.2	21.4
Total Expenses	1,071.0	1,143.9	1,034.2
Net Position	233.3	34.0	165.4

^{*}Amounts displayed in millions of dollars

Operating Revenue

San Diego Community Power operates as a Joint Powers Authority (JPA), providing clean energy to residents and businesses within its service area. Revenue is generated primarily through electricity sales, with a core financial principle of maintaining a balanced budget. This requires electricity sales revenue to cover power generation costs - especially from renewable sources - and operational expenses. Financial sustainability is also pursued through strategies like building reserves.

Generally, operating revenue through electricity sales is derived by: 1) estimating Community Power's energy load for the upcoming fiscal year; 2) applying the Board-approved generation rates to the energy load; and 3) applying a 1.75% uncollectible rate based on revenue that Community Power does not expect to collect — the result is Community Power's operating revenue for the fiscal year.

As a JPA, Community Power functions under distinct governing principles, unlike investor-owned utilities. Its primary goal is to deliver affordable, renewable power to diverse customers, ranging from large commercial and industrial entities to individual residential customers, including those with financial constraints. Affordability for our communities is highly valued, significantly shaping operational and rate-setting decisions.

The latest financial projections, through January 2025, informed Community Power's rate-setting process. The staff-recommended rates were developed to reasonably and appropriately cover operational expenses and projected revenues for fiscal years 2024-2025 and 2025-2026. These rates aim to balance customer affordability with the need to generate sufficient revenue to cover annual power supply and operating costs, debt service and a planned reserve margin contribution, ultimately achieving a balanced budget. The rate recommendations also allow Community Power to balance affordability for customers while maintaining reserves and progressing toward its 180-day cash-onhand and reserve stabilization goals. Achieving these reserve targets is not feasible with additional rate discounts beyond the proposed rates. Furthermore, the proposed rates and reserve targets enable Community Power to meet key metrics for achieving an investment-grade credit rating, which is crucial for rate competitiveness by securing favorable terms for power procurement and credit activities. Finally, the adopted rates ensure compliance with financial covenants in agreements with JP Morgan Chase Bank (Revolving Credit Agreement), River City Bank (Security Agreement) and various power purchase agreements.

Community Power's retail sales of electricity are composed of four rate products.

FIGURE 24. COMMUNITY POWER'S RATE PRODUCTS*

Power100 Green+

PowerOn + \$0.02 per kWh

100% renewable, carbon-free. Green-e certified for businesses looking to meet LEED standards

Power100

PowerOn + \$0.01 per kWh

100% renewable and carbon-free for residents and businesses who want to minimize their carbon footprint and support a clean energy future

PowerOn

\$0.163 per kWh**

55% renewable content at a competitive price compared with SDG&E's service that is the default rate for most Community **Power customers**

PowerBase

\$0.160 per kWh**

5% less expensive than SDG&E's default service

^{*}Prices valid as of February 1, 2025

^{**}Average rate across all Community Power rate schedules

FIGURE 25. COMMUNITY POWER REVENUE TREND

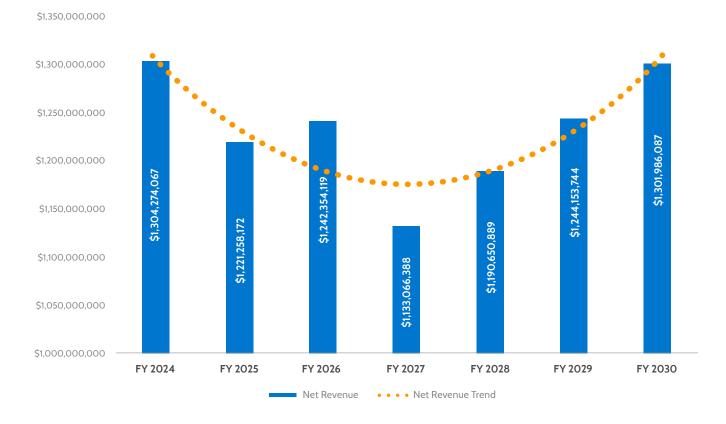


Table 2 summarizes the revenues for the FY24 Amended Budget, FY25 Amended Budget and FY26 Proposed Operating Budget.

TABLE 2. OPERATING REVENUE BY BUDGET LEVEL 2*

	FY24 Amended	FY25 Amended	FY26 Proposed
Gross Ratepayer Revenues	1,365.7	1,243.0	1,221.0
(FY24 Less 4.5% Uncollectible Customer Accounts; FY25 & FY26 Less 1.75%)	(61.4)	(21.8)	(21.4)
Net Operating Revenues	1,304.3	1,221.2	1,199.6

^{*}Amounts displayed in millions of dollars

Operating Expenses

Expenses in the Community Power 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.

Table 3, below, summarizes the expenses for the FY24 Amended Budget, FY25 Amended Operating Budget and FY26 Proposed Operating Budget.

TABLE 3. OPERATING EXPENSES BY BUDGET LEVEL 2*

	FY24 Amended	FY25 Amended	FY26 Proposed
Cost of Energy	1,020.8	1,116.8	956.7
Professional Services and Consultants	22.3	24.3	24.6
Personnel Costs	11.7	18.6	21.1
Marketing and Outreach	2.9	3.0	2.6
General and Administration	6.8	4.9	5.9
Programs	0.1	0.0	0.0
Subtotal Operating Expenses	1,064.7	1,167.6	1,010.9
Interest and Related Expenses	2.4	1.3	1.9
Capital Investment Program (Transfer Out)	4.6	18.2	21.4
Total Expenses	1,071.7	1,147.1	1,034.2

^{*}Amounts displayed in millions of dollars

Operating Expenses by Department

Table 4, below, summarizes the FY26 Proposed Operating Budget expenses by department. Several new departments were established as part of the development of the FY26 Proposed Operating Budget and therefore a comparison is not shown for the prior year.

TABLE 4. OPERATING EXPENSES BY DEPARTMENT

	FY24 Amended	FY25 Amended	FY26 Proposed
Power Services	1,022.4	1,118.9	958.6
Operations	16.3	20.6	22.6
Customer Operations	18.1	19.3	19.8
Finance	3.3	2.1	3.4
Public Affairs	1.5	1.8	1.9
IT and Data Analytics	1.0	1.4	1.6
Regulatory and Legislative Affairs	1.1	0.7	0.7
Human Resources and Administration	0.9	0.7	0.7
Legal	0.0	1.8	1.4
Programs	0.1	0.0	0.0
Executive Team	0.0	0.2	0.2
Total Expenses	1,064.7	1,167.6	1,010.9

Amounts displayed in millions of dollars

Personnel by Department

Table 5, below, summarizes the actual personnel at the end of FY25 and the full-time equivalent (FTE) personnel in the FY26 Proposed Operating Budget. While personnel may be authorized, they may not yet be filled. Detailed information showing filled and proposed FTE transfers by department is included in the following Section. All of the Personnel budget is included within the Operations department.

TABLE 5. PERSONNEL BY DEPARTMENT

	FY24 Amended	FY25 Amended	FY26 Proposed
Operating Fund			
Power Services	17.0	16.0	17.0
Executive	1.0	5.0	5.0
Public Affairs	11.0	12.0	13.0
Programs	6.0	12.0	14.0
Finance	7.0	9.0	10.0
Customer Operations	6.0	8.0	5.0
Operations	6.0	5.0	4.0
IT and Data Analytics	6.0	9.0	12.0
Regulatory and Legislative Affairs	5.0	5.0	5.0
Human Resources and Administration	3.0	4.0	6.0
Legal	1.0	2.0	3.0
Subtotal Operating FTEs	70.0	87.0	94.0
External Funding (CIP)			
Programs	1.0	3.8	5.0
Regulatory Affairs	-	0.5	0.7
Finance	-	1.0	1.0
Public Affairs	-	1.0	1.0
Power Services	-	-	0.3
Subtotal External Funding FTEs	1.0	6.3	8.0
Total FTEs	70.01	80.7	86.0

¹14 FTEs were approved but not hired in FY24 and need to be reapproved in FY25.

FIGURE 26. COMMUNITY POWER'S DEPARTMENTS

Executive Team	Operations Human Resources and Administration		Finance				
Power Services		Program	s	Regulatory and Legislative		Public Affairs	
Legal			IT and Da Analytics		Custome Operatio		

Proposed Capital Budget

Continuing in FY 2025-2026 is the Community Power Capital Investment Plan (CIP) for FY 2025-2029 that will contain all the individual capital projects, major equipment purchases and major programs for the agency that are intended to span multiple years and that are considered onetime projects rather than recurring projects.

The first year of the FY 2025-2029 CIP represents the amended FY 2025-2026 capital budget.

The FY 2025–2026 budget proposes 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 proposed FY 2025–2026 capital budget totals \$54.4 million and the FY 2025–2029 CIP total \$304.3 million. Additionally, \$10.3 million in unspent continuing funds was appropriated by the Board in prior fiscal years and is represented as Carry Forward revenue. The FY 2025-2026 proposed capital budget includes funding for 21 projects in all program areas in various geographic areas of San Diego County.

TABLE 6, FY 2025-2026 CAPITAL BUDGET OVERVIEW*

	Carry Forward ^[1]	FY26 Authorized Budget	FY26 Proposed Budget
Operating Transfer Out	7.5	-	21.4
Regional Energy Network ^[2]	0.3	31.8	31.8
DAC-GT	0.5	0.3	0.3
CDFA	0.5	-	-
Equitable Building Decarbonization	1.5	-	-
Other	-	-	0.9
CIP Revenue	10.3	32.1	54.4

^{*}Amounts displayed in millions of dollars

[🗓] The carry forward amount represents actual financial data through March 31, 2025, and will be reconciled at the close of fiscal year 2024-2025

^[2]The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Year 2024–2027

	Beginning Bal.	Expenses	Carry Forward [1]	5-Year Budget					
	FY25	FY25	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding									
Regional Energy Network	2.1	1.8	0.3	31.8	59.5	51.4	42.0	43.7	228.7
DAC-GT	0.9	0.4	0.5	0.3	0.5	0.5	0.5	0.5	2.7
CDFA	0.7	0.2	0.5	-	-	-	-	-	0.5
Equitable Building Decarbonization	1.5	-	1.5	-	-	-	-	-	1.5
Other	-	_	-	0.9	-	-	-	-	0.9
Subtotal	5.2	2.4	2.8	33.0	60.0	51.9	42.5	44.2	234.4
Internal Funding									
Solar Battery Savings	10.6	7.9	2.7	18.8	11.1	10.4	8.3	8.5	59.8
Energy Efficiency	0.3	0.3	-	-	-	-	-	-	-
Pilot Programs	3.0	1.3	1.7	-	-	-	-	-	1.7
Grants	0.8	0.3	0.7	0.8	-	-	-	-	1.5
DER	0.1	0.0	0.1	-	_	-	-	-	0.1
Flexible Load	0.6	0.5	0.2	0.3	0.6	0.6	0.8	0.7	3.1
IT Projects	2.6	0.6	2.0	1.5	-	-	-	-	3.5
Community Education	0.1	0.0	0.0	1	1	-	-	-	0.0
Program Evaluation	-	_	-	0.3	-	-	-	-	0.3
Other	_	-	-	0.2	-	-	-	-	0.2
Subtotal	15.4	11.1	7.5	21.4	11.7	11.0	9.1	9.2	69.9
CIP Expense Total	20.6	13.5	10.3	54.4	71.7	62.9	51.6	53.4	304.3

^[1] The carry forward amount represents actual financial data through March 31, 2025, and will be reconciled at the close of fiscal year 2024–2025

Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2025–2029 Capital Improvement Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$304.3 million in investments across Community Power member jurisdictions. More detail can be found within the companion FY 2025-2029 Capital Improvement Plan book. Projects include a number of short- and medium-term programs and projects that are largely pilot and planning studies. This allows Community Power to thoughtfully plan and design its projects and programs — based on community and agency needs — to deliver programs and projects that provide maximum public impact and that can potentially leverage other local, state and federal funds.

This plan continues Community Power's commitment to plan and finance programs and projects that align with community and organizational priorities. The programs and projects compose a list that provides Community Power with the confidence to target a core set of program types focused on community needs. It also gives Community Power the flexibility to co-design programs with community partners and to be responsive to external funding opportunities as they emerge.

This plan is not a final or absolute list of funded projects, and projects may not have funding identified. Each funded and partially funded project shows a potential source of funding but this does not necessarily indicate that actual funding of the project has occurred. As design requirements, budgets



and priorities change, the planned projects may also move within the plan or drop out entirely.

Likewise, this list is not all inclusive. Unexpected requirements often cause unforeseen projects to be inserted into the design and execution process. Furthermore, funding sources identified in the CIP are potential funding sources that may not materialize. Projects, programs and funding are additionally subject to Board approval consistent with the JPA and the internal policies and programs of the agency.

CIP Development Process

Community Power will update the CIP annually during its budget development process. Programs and projects are included in the CIP based on alignment with Community Power's strategic goals and based on community engagement.

The proposed capital budget and CIP undergo a public outreach process comprising a wide range of stakeholder groups. Additionally, the CIP is a dynamic document that is intended to be updated regularly as needs shift or as fund availability changes. All subsequent updates to the CIP will be brought to the Community Power Board for approval.

FIGURE 27. CIP DEVELOPMENT PROCESS



Operational Impact of Capital Projects

Projects outlined in Community Power's Capital Investment Plan and Budget are generally designed to address the needs of existing assets without significantly impacting operational costs. However, if a technology or any project was planned that had a significant operational impact, projected costs would be reflected in Community Power's Five-Year Financial Plan, issued annually. Additionally, staffing, building maintenance, equipment maintenance and utility costs associated with these facilities would be approved as part of the annual Budget Process. As a result, these costs would be specified within the Budget document and categorized under the "Budget by Department" section and attributed to the relevant department sponsoring the project.

Capital improvements are strategic investments made by Community Power to enhance its physical assets, technology and infrastructure. These improvements are not just about upgrading facilities or equipment but are also aimed at driving efficiency within our organization's operations over the long term. By investing in capital improvements, the organization seeks to optimize its processes, reduce costs and improve overall productivity.

Several projects driven by our IT and Data Analytics Department are at the forefront of these efforts. These projects are prioritized to leverage data and enable advanced data analytics techniques. The goal is to better understand the organization's operations and discover operational efficiencies. Here's how these projects contribute to long-term efficiency:

Data Collection and Integration — IT and Data Analytics focuses on collecting data from various sources within the organization. This includes data from production processes, supply chain activities, customer interactions and more. By integrating this data into a centralized system, the organization can gain a comprehensive view of its operations.

Advanced Data Analytics — With a robust data infrastructure in place, the IT and Data Analytics Department employs advanced data analytics techniques such as machine learning, predictive analytics and big data analysis. These techniques help in identifying patterns, trends and anomalies in the data that might not be apparent through traditional analysis methods.

Operational Insights — The insights gained from data analytics are used to understand the efficiency of current operations. For example, analytics can reveal bottlenecks in production,

inefficiencies in supply chain management or areas where customer service can be improved. These insights are crucial for making informed decisions about where to focus improvement efforts.

Process Optimization — Based on the operational insights, the organization can implement changes to optimize processes. This might involve automating certain tasks, reallocating resources or redesigning workflows to eliminate inefficiencies. The goal is to streamline operations and enhance productivity.

Continuous Improvement — Capital improvements driven by data analytics are not one-time efforts. The organization continuously monitors its operations and uses data to identify new opportunities for improvement. This ongoing process ensures that the organization remains agile and can adapt to changing market conditions and technological advancements.



Multiyear Trends

This section presents a multiyear financial trend report for Community Power, reviewing the actuals from Fiscal Years 2022. 2023 and 2024 and the Fiscal Year 2025 Amended Budget. The report includes visualizations that illustrate key financial trends and variances, providing a clear and comprehensive picture of the organization's fiscal trajectory over the past three years. By examining these figures, Community Power can gain insights into revenue patterns, expenditure changes and overall financial stability. This analysis is essential for understanding how past financial outcomes align with future budgetary goals, ensuring effective financial planning and management.

Community Power has experienced substantial growth in both operating revenues and expenditures from FY22 to FY24. In FY22, Community Power's operating revenues were \$386 million, increasing to \$891 million in FY23, and further rising to \$1.1 billion in FY24. This growth is primarily driven by expanding electricity sales and an increased customer base. Concurrently, operating expenses have also escalated, from \$329 million in FY22 to \$746 million in FY23, and reaching \$1.083 billion in FY24, reflecting higher costs associated with electricity procurement and use of contract services. Despite these rising costs, Community Power has consistently maintained a positive operating income, indicating effective financial management and strategic planning. The FY25 Amended Budget continued growth and stability, ensuring Community Power's ability to meet its operational goals and effectively serve the community.

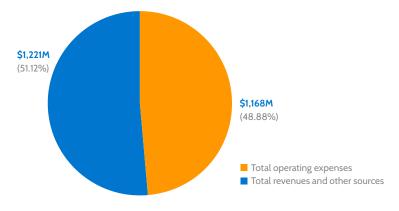
FIGURE 28. OPERATING REVENUES VS. EXPENDITURES



	FY 2021/22	FY 2022/23	FY 2023/24
OPERATING REVENUES			
Electricity sales, net	\$383,800,198	\$891,178,064	\$1,252,787,768
Grant revenue	\$0	\$0	\$983,500
Liquidated damages	\$2,437,500	\$0	\$0
Other income	\$0	\$0	\$10,598,252
Total operating revenues	\$386,237,698	\$891,178,064	\$1,264,369,520
OPERATING EXPENSES			
Cost of electricity	\$319,686,027	\$720,327,704	\$1,047,553,476
Contract services	\$3,520,098	\$15,957,376	\$19,750,534
Staff compensation	\$3,662,441	\$6,726,270	\$11,399,388
Other operating expense	\$2,098,031	\$2,866,222	\$3,261,424
Depreciation and amortization	\$0	\$253,553	\$727,567
Total operating expenses	\$328,966,597	\$746,131,125	\$1,082,692,389
TOTAL OPERATING INCOME	\$57,271,101	\$145,046,939	\$181,677,131

Community Power's FY25 amended budget reflects the organization's strong financial growth and stability observed in past fiscal years. The budget included total operating revenues of \$1.22 billion and total expenses of \$1.17 billion, maintaining a balanced approach similar to previous years. Revenue growth, driven by expanding electricity sales and an increasing customer base, aligns with the upward trend seen from FY22 to FY24. Increased costs in FY25 are primarily due to higher electricity procurement expenses and investments in the CIP. Despite these rising costs, the positive net operating income highlights effective financial management and strategic planning.

FIGURE 29. OPERATING BUDGET



Five-Year Financial Plan

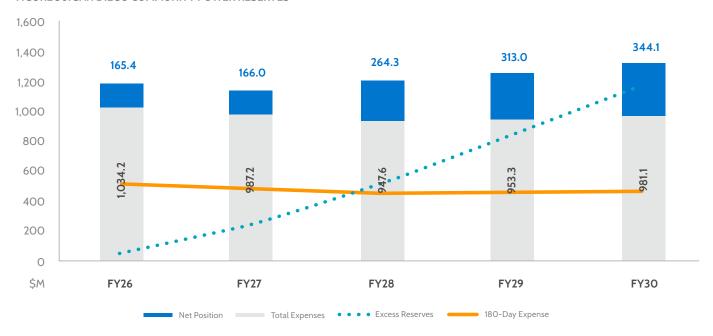
Community Power's five-year financial plan projects that the agency will meet its 180-days cash-on-hand reserve target in its Reserve Policy by October 2025. The current reserve policy supports the distribution of excess reserves for specific purposes, including funding a rate stabilization reserve. Additionally, the plan projects that Community Power will achieve its Strategic Plan goal of funding a Rate Stabilization Reserve by FY 2026–2027. The plan assumes that rates remain at the same level adopted by the Board on February 7, 2025, and are subject to change based on Community Power's rate-setting cycle.

The Community Power Board reassesses its projections, five-year financial plan and reserve targets annually during its rate-setting process in January and during its budget development process ending in June.

Key assumptions in Community Power's projections and five-year financial plan include:

- Full enrollment of customers is complete from all member jurisdictions
- A 95% participation rate across all jurisdictions
 - A 1.75% uncollectible rate, which maintains the same uncollectible rate from the fiscal year 2024-2025 amended budget approved by the board February 27, 2025
- Trifurcation of rates continues to ensure a fair, equitable and balanced rate structure across customers with differing vintage years
 - · Rates in FY26 and beyond remain at the levels adopted by the Board on February 7, 2025. Further rate changes are subject to Board approval.

FIGURE 30. SAN DIEGO COMMUNITY POWER RESERVES



OPERATING BUDGET, \$M	FY26	FY27	FY28	FY29	FY30
Net Revenue	1,119.6	1,133.1	1,190.7	1,244.2	1,302.0
Total Expense	1,034.2	967.0	926.4	931.1	957.9
Annual Reserve (Net Position)	165.4	166.0	264.3	313.0	344.1
Cumulative Net Position	574.9	741.0	1,005.3	1,318.3	1,662.40
180-Day Expense	510.0	486.8	467.3	470.1	483.8
Projected Excess Reserves	64.9	254.1	538.0	848.2	1,178.6



Budget by Department

Executive

Providing strategic leadership to guide the agency and deliver on its mission

Mission and Services

The Executive team provides agency-wide leadership and strategic direction for Community Power. Led by the chief executive officer and supported by the executive team, the department ensures alignment across departments, cultivates an inclusive and accountable culture and oversees implementation of the strategic plan.

The Executive team represents Community Power in public forums, guides internal systems development and advances partnerships with local governments, stakeholders and industry peers. Through consistent engagement with member agencies, the Board of Directors and Community Advisory Committee, and regional coalitions, the team builds trust and helps position Community Power as a leading voice in California's clean energy transition.

Department Highlights

- Led development and rollout of the FY 2025–2026 strategic plan
- Continued engagement with CalCCA and participation in key state policy forums
- · Oversaw internal management systems and staff training
- Supported cross-functional alignment through quarterly strategy check-ins
- · Advanced initiatives to promote equity, transparency and operational integrity

Key Performance Indicators (KPIs)

- · Strategic goals aligned across departments (target: seven)
- · Annual rate setting via public process (target: effective Feb. 1)
- · Reserve balance and days cash on hand (target: 180 days by FY 2027)
- · Number of external events attended by executive staff (target: 60)

Department Organizational Structure

FIGURE 31. EXECUTIVE ORGANIZATIONAL STRUCTURE

Chief Executive Officer

KARIN BURNS

Chief Financial Officer and Deputy Chief Executive Officer/Treasurer

ERIC WASHINGTON

Chief Operating Officer

IACK CLARK

Chief Commercial Officer¹

VACANT

General Counsel

VEERA TYAGI

¹ Formerly titled Managing Director Power Services

Operations

Improving internal operations and alignment to support strategic execution

Department Description: Mission and Services

Operations ensures that Community Power functions effectively and efficiently across all departments. Led by the chief operating officer and supported by senior directors and project management staff, Operations drives internal coordination, facilitates collaboration and operationalizes the agency's strategic objectives.

The team oversees internal governance, agencywide administrative systems and policy development. Operations is also responsible for engagement with the Community Advisory Committee (CAC), ensuring transparency and accountability. The newly created Project Management Office (PMO), housed within Operations, leads efforts to align project execution with strategic priorities, standardize workflows, create efficiencies and improve internal delivery.

Operations Highlights

- · Supported growth to 80 full-time positions with strategic resource planning
- Launched agencywide project intake and documentation process through PMO
- · Conducted internal process audits to identify operational bottlenecks
- · Improved CAC and Board engagement through increased coordination and support
- Advanced internal efficiency through cross-departmental collaboration systems

FY 2025–2026 Priorities

- · Enhance internal systems and tools to support crossfunctional execution
- · Improve agency-wide project visibility, reporting and governance
- · Develop the internal infrastruct ure needed to scale efficiently as Community Power grows
- · Strengthen alignment between agency goals, departmental workplans and staff resources

Key Performance Indicators (KPIs)

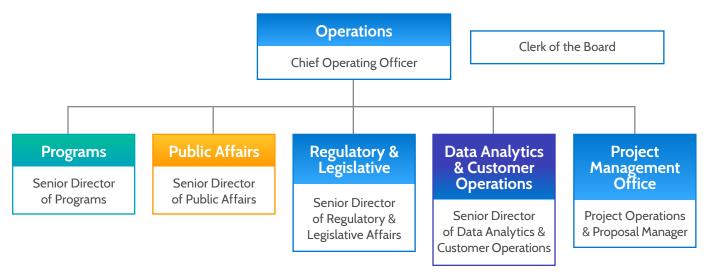
- · Implement new project intake and tracking tools (target: Q2 FY 2025)
- Maintain a cross-functional project schedule (target: update quarterly)
- Implement a team utilization framework (target: Q3 FY 2025)
- · Develop and launch a centralized internal dashboard for tracking project and policy updates (target: Q3 FY 2025)
- Conduct project reviews with the Executive team to ensure strategic alignment (target: review quarterly)

TABLE 7. OPERATIONS POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Operations	7.0	4.0

Department Organizational Structure

FIGURE 32. OPERATIONS ORGANIZATIONAL STRUCTURE



Power Services

Developing a clean energy portfolio that is reliable, affordable and increasingly renewable

Department Description: Mission and Services

The Power Services Department is responsible for managing Community Power's energy procurement and delivery portfolio, ensuring that customers receive clean, reliable and competitively priced electricity. This includes all long- and short-term energy contracting, load forecasting, power scheduling, wholesale market participation, energy risk management and compliance with state regulatory mandates.

Under the leadership of the chief commercial officer, Power Services oversees competitive solicitations and negotiation of power purchase agreements (PPAs) and Energy Storage Service Agreements (ESSAs), working to meet state mandates and voluntary goals related to the Renewable Portfolio Standard (RPS) and Resource Adequacy (RA). The department also plays a key role in diversifying supply, expanding clean energy development and accelerating the build-out of local energy infrastructure, including distributed energy resources (DERs).

Department Highlights

- Expanded to 16 team members to manage procurement, forecasting and compliance functions
- Maintained energy hedging strategy to mitigate cost volatility and market exposure in FY 2026 and beyond
- Procured Energy Trading Risk Management (ETRM) system
- · Worked with general counsel to bring transactional counsel in-house to support higher transaction volume and legal review of complex energy agreements
- · Continued contracting for and managing developing longterm clean energy resources to meet Community Power's 100% renewable energy goals

FY 2025-2026 Priorities

- · Manage portfolio to manage risk, cost and reliability objectives through risk management tools, sufficient staffing and staff training
- Advance toward a 100% renewable energy portfolio by 2035, with interim targets of 75% by 2027 and 85% by 2030
- Support development of 1 gigawatt of local clean energy capacity by 2035, including at least 300 megawatts from DERs enabled through programs, tariffs and procurement
- Ensure cost-effective compliance with RA and RPS requirements and all other state regulatory obligations
- · Prioritize projects and partnerships that help create highquality local jobs in the clean energy economy

Key Performance Indicators (KPIs)

- · Maintain alignment with Community Power's energy risk management policy
- · Ensure timely filing of all resource adequacy month-ahead filings as well as the year-ahead filing due in October 2025
- · Submit annual Integrated Resource Plan, Renewable Portfolio Standard Plan and Mid-Term Reliability updates
- Finalize and implement Feed-In Tariff 2.0 and secure additional local energy contracts
- Implement and integrate an ETRM system to improve energy risk management and internal analytics by Q3 2025
- · Bring online the first Power Purchase Agreement where SDCP has full control of scheduling coordinator responsibilities

TABLE 8: POWER SERVICES POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Power Services	16.0	

^{*0.3} position will be externally funded in FY26

Department Organizational Structure

FIGURE 33. POWER SERVICES ORGANIZATIONAL STRUCTURE

Power Services

Chief Commercial Officer

Director of Power Contracts Director of Portfolio Management Director of Origination Associate Director-Load Forecast & Optimization Principal Portfolio Manager Senior Settlements Manager Senior Local Development Manager Senior Portfolio Manager Senior Portfolio Manager Origination Manager Senior Settlements Analyst Senior Quantitative Energy Analyst

Senior Compliance Analyst Contract Management Associate Contract Associate *Portfolio Analyst Energy

*Senior Market and Modeling Analyst



^{*}Positions authorized in FY26

Finance

Promoting long-term organizational sustainability through sound fiscal management and strategic investment

Department Description: Mission and Services

The Finance Department ensures the long-term fiscal health of Community Power through sound financial planning, risk management and transparency. The department manages budgeting, accounting, cash flow, reserves, audits, financial policy implementation, debt financing including clean prepayment financing, and fiscal compliance.

Finance supports the organization's mission by maintaining strong financial controls, enabling informed decisionmaking and positioning the agency to invest in programs, infrastructure and operations that advance clean energy access and community benefits.

Department Highlights

- · Continued focus on building reserves to meet the 180-day cash-on-hand goal
- · Coordinated annual financial audit with no findings in FY 2023
- · Developed internal financial controls and contracts tracking system
- Advanced implementation of the Capital Investment Plan
- · Supported the execution of multiple clean energy prepay bond transactions

FY 2025-2026 Priorities

- Execute 3-5 clean prepay bond transactions to reduce power costs by up to \$30 million annually
- Contribute \$80 million toward the reserve goal by the end of FY 2025-26
- · Build a Rate Stabilization Reserve to mitigate power market volatility
- · Launch a vendor and contracts tracking system to strengthen fiscal controls
- Establish a Middle Office to enhance energy risk monitoring and oversight
- Maintain fiscal transparency through regular public reporting and committee updates

Key Performance Indicators (KPIs)

- Reserve balance and days cash on hand (target: 180 days by FY 2027)
- · Number of clean energy prepay transactions executed and savings achieved
- · Reviewing budget-to-actuals to identify financial efficiencies
- Achievement of investment-grade credit rating readiness benchmarks

TABLE 9. FINANCE POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Finance	8.0	

^{*1.0} position will be externally funded in FY26

Department Organizational Structure

FIGURE 34. FINANCE ORGANIZATIONAL STRUCTURE

Finance
Chief Financial Officer/Treasurer
Director of Finance
Procurement Manager
Risk Manager
Finance Manager
Strategic Finance Manager
Senior Financial Analyst
Financial Analyst
Financial Analyst
Procurement Analyst
*Senior Risk Manager

^{*}Position authorized in FY26

Customer Operations

Ensuring high customer satisfaction and retention through responsive service, affordability and clear communication

Department Description: Mission and Services

The Customer Operations Department supports customer satisfaction and retention by ensuring clear, timely and accurate billing, analyzing usage trends and delivering exceptional account management. Under the guidance of the chief operating officer and leadership of the senior director of data analytics and customer operations, the team manages contact center operations, supports key accounts and provides analytical insights to guide rate setting, forecasting and customer service enhancements.

The department plays a central role in delivering Community Power's promise of clean, affordable energy through customer-focused strategies. It supports interagency coordination with SDG&E and Calpine to mitigate billing errors and maintains the tools and insights that drive high customer retention, satisfaction and service engagement.

Department Highlights

- · Lowered electricity generation rates for the second consecutive year for Community Power customers
- Launched two new rate offerings PowerBase and Power100 Green+ - to meet customer needs
- Oversaw more than \$19 million in vendor service contracts, including Calpine and SDG&E
- · Partnered closely with SDG&E and Calpine to improve billing accuracy and address customer concerns
- · Continued enhancements to internal data tools that track opt actions, revenues and customer engagement
- Played a pivotal role in maintaining customers' participation rate of 95%+ over the last 3 years

FY 2025-2026 Priorities

- · Evolve rate strategy to ensure competitiveness, affordability and fiscal sustainability
- · Develop targeted strategies to increase customer retention and promote opt-ups to Power100
- · Resolve outstanding billing and communication issues with SDG&E that affect customer satisfaction
- Identify and evaluate potential enhancements to customer service delivery, including a future Energy Advisor Center
- Implement measures to reduce customer arrearages and improve long-term account health
- · Support contact center training and performance monitoring for consistent, high-quality service

Key Performance Indicators (KPIs)

- Customer retention rate (target: 90%+)
- · Number of opt-ups to Power100 (target: 10% of total load by 2027)
- Customer satisfaction score via surveys (target: score 9/10)
- · Rate of issue resolution and billing accuracy (target: 99%+ first-contact resolution)
- · Close collaboration with SDG&E and the agency's collection vendor to reduce arrearages year over year
- · Number of service enhancements implemented or piloted (target: 2–3 new initiatives in FY26)

TABLE 10. CUSTOMER OPERATIONS POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Customer Operations	7.0	5.0

Department Organizational Structure

FIGURE 35. CUSTOMER OPERATIONS ORGANIZATIONAL STRUCTURE

Customer Operations

Senior Director of Data Analytics and Customer Operations

Account Services Manager Key Account Services Manager Senior Account Services Analyst Senior Key Account Analyst

IT and Data Analytics

Creating a secure and efficient environment that supports collaboration and innovation

Department Description: Mission and Services

The IT and Data Analytics Department empowers Community Power through secure, scalable and modern digital infrastructure. Reporting to the senior director of data analytics and customer operations and led by the associate director of IT and Data Analytics, the department manages enterprisewide systems, data and analytics platforms, and cybersecurity.

The team develops and maintains centralized, cloud-based tools that enable real-time, data-informed decisions across rate development, customer programs, marketing and operations. By implementing robust security protocols and IT governance, the department ensures business continuity, system resilience and a strong data-driven culture throughout the agency.

Department Highlights

- Launched agencywide managed IT services with cybersecurity protections
- Completed enterprise assessment to align systems with strategic goals
- · Advanced development of an enterprise data platform (EDP) to centralize analytics
- Supported implementation of improved forecasting models that account for solar generation
- · Partnered with the Project Management Office (PMO) to assess project management platforms

FY 2025-2026 Priorities

- Strengthen cybersecurity framework and conduct annual penetration testing
- · Launch enterprise data platform with integration of critical data systems by Q4 FY 2025
- Finalize IT policies and governance procedures by Q2 FY 2025
- · Select and implement a project management system with PMO support by Q2 FY 2025
- · Expand in-house analytics support to additional Community Power departments by FY 2026

Key Performance Indicators (KPIs)

- · Number of cybersecurity incidents reported (target: 0)
- Percentage of critical retail operations data systems integrated into EDP (target: ≥ 98%)
- Project management system implemented and training completed (target: Q3 FY 2025)
- Number of departments supported with internal analytics (target: ≥ four)
- Number of reporting dashboards deployed (target: four to six)
- Percentage of IT incidents resolved within service level agreement (SLA) (target: ≥ 98%)
- Adoption of IT policy and governance framework (target: approved by Q2 FY 2025)

TABLE 11. IT AND DATA ANALYTICS POSITIONS

DEPART POSITION		FY25 Actual	FY26 Proposed
IT and E	ata Analytics	8.0	12.0

Department Organizational Structure

FIGURE 36. IT AND DATA ANALYTICS ORGANIZATIONAL STRUCTURE

IT and Data Analytics

Senior Director of Data Analytics and Customer Operations

Associate Director of IT and Data Analytics

Data Analytics Manager

Rate and Strategy Manager

IT Manager

Senior Cybersecurity Analyst

Data Scientist

IT Systems Engineer

Data Engineer

IT Systems Analyst

Senior Rates Analyst

Data Analyst

Senior Integration System Ops Developer

Public Affairs

Building a trusted public agency through strategic outreach, education and engagement

Department Description: Mission and Services

The Public Affairs Department connects Community Power with the people and communities it serves. Through strategic communications, local partnerships and public engagement, the team builds awareness of Community Power's mission, programs and benefits. The department also supports customer education, agency branding and transparency in all public-facing materials.

Led by the senior director of public affairs and reporting to the chief operating officer, the department includes three core focus areas: strategic partnerships, community engagement, and marketing and communications. Together, these teams advance Community Power's brand identity, foster connections with key audiences and ensure transparency through outreach, media engagement and public education. The department also supports the Community Advisory Committee (CAC) and helps ensure local priorities are reflected in agency decision-making.

Department Highlights

- Participated in 151 community outreach events in 2024, resulting in 18,539 unique interactions
- · Achieved an estimated 1.2 million impressions through in-person outreach and strategic media and partner efforts, including CBS 8's "Working for Our Communities" partnership
- Supported the CAC and provided updates to member agency city councils
- · Managed the agency's brand refresh and website redesign
- · Produced quarterly newsletters, social media content and other tools to increase customer understanding and transparency

FY 2025-2026 Priorities

- Expand public understanding of Community Power's clean energy programs and rate options
- Strengthen brand awareness and build community trust across diverse audiences with the launch of Community Power's new website
- · Partner with member agencies and community-based organizations to reach underserved populations
- · Support program launches and other resources through clear, multilingual and accessible messaging
- · Ensure ongoing transparency through coordinated media outreach, digital engagement and community events

Key Performance Indicators (KPIs)

- · Number of public events attended or hosted (target: 100 annually)
- · Total impressions across digital and earned media (target: 1.2 million)
- Newsletter open rate and click-through metrics
- (target: 40% open, 10% click-through)
- Number of reinvestments in in member agencies through partnerships, sponsorships and engagements (target: partner, sponsor or fund at least four engagements in each member agency annually)
- Number of earned media opportunities (target: six annually)

TABLE 12. PUBLIC AFFAIRS POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Public Affairs	12.0	

^{*1.0} position will be externally funded in FY26

Department Organizational Structure

FIGURE 37. PUBLIC AFFAIRS ORGANIZATIONAL STRUCTURE

Public Affairs

Senior Director of Public Affairs

Senior Manager Strategic Partnerships Senior Manager Marketing & Communications Senior Manager Community Engagement Strategic Initiatives Manager Local Government Affairs Manager Marketing Manager Marketing Manager Community Engagement Associate Communications Associate Community Engagement Coordinator Community Outreach Representative *Communications Associate

^{*}Position authorized in FY26

Programs

Implementing energy projects and programs that reduce emissions, align supply and demand, and deliver community benefit

Department Description: Mission and Services

The Programs Department designs and implements initiatives that reduce customer bills, increase energy resilience and expand access to clean energy. Under the guidance of the chief operating officer and the leadership of the senior director of programs, the team manages incentive programs, pilots and partnerships that serve residential, commercial and public agency customers across the region.

Program area focus and design are guided by Community Power's Community Power Plan (CPP), Climate Action Plans from member agencies, and state and federal policy. From residential battery incentives to electric vehicle charging management, the department supports scalable, equitable decarbonization across sectors. The department works closely with community-based organizations, industry stakeholders and internal departments to ensure program design is equitable, cost-effective and scalable.

The department also leads the launch and administration of the San Diego Regional Energy Network (SDREN) in partnership with the County of San Diego, a transformative multi-year effort to deliver energy efficiency and demand-side management programs across San Diego County.

Department Highlights

- Launched the Solar Battery Savings program, recognized in the U.S. Department of Energy's 2025 Virtual Power Plant Liftoff Report, to create a 7 MW Virtual Power Plant via customer-owned residential battery storage
- · Received approval for the San Diego Regional Energy Network (SDREN) application, generating nearly \$125 million in program funding for the region through 2027
- · Initiated customer-facing pilots in building decarbonization, flexible load management, healthy and efficient refrigeration and transportation electrification
- · Built new strategies for vehicle-grid integration, virtual net billing and distributed energy resource deployment
- · Executed state and federal grants, including the CDFA Healthy Refrigeration Grant and support for SANDAG's Climate Pollution Reduction Grant proposal
- · Partnered in strong cross-departmental collaboration to integrate customer, regulatory and operational inputs into program design

FY 2025–2026 Priorities

- Deliver 150 megawatts of local capacity from distributed energy resources (DERs) and Community Power's Virtual Power Plant (VPP) portfolio by 2035, including expansion of the Solar Battery Savings program
- · Launch all SDREN programs and make them available to customers by the end of FY 2026

- Develop and implement a formal program evaluation framework for all programs and pilots by FY 2026
- · Secure new program funding from external sources, including state, federal and philanthropic entities
- Integrate Distributed Energy Resources Management System (DERMS) software and flexible load strategies into program implementation
- · Support electrification and resiliency through targeted customer offerings in solar + storage, demand response and energy efficiency

Key Performance Indicators (KPIs)

- · DER capacity added through program implementation (target: 20 MW in FY 2025-26, 150 MW by FY 29-30)
- · Ten SDREN programs launched and available to customers (target: all core programs by FY 2025-26)
- Program evaluation framework completion and deployment (target: Q4 FY 2025-26)
- · Equity-focused program participation from priority communities (target: 50% of total incentive funding)

TABLE 13. PROGRAMS POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Programs	11.0	

^{*5.0} positions will be externally funded in FY26

Department Organizational Structure

FIGURE 38. PROGRAMS ORGANIZATIONAL STRUCTURE

Customer Programs				
Senior Director of Programs				
Senior Director of Programs Associate Director of Programs Associate Director of Programs - Flex Load Senior Program Manager Senior Program Manager Senior Program Manager Senior Program Manager	Program Manager Program Manager - Community Solar Senior Program Associate Senior Program Associate Senior Program Associate *Program Associate *Senior Program Associate			



^{*}Positions authorized in FY26

Regulatory and Legislative Affairs

Advocating for policies that advance Community Power's mission and protect local decision-making

Department Description/Mission and Services

The Legislative and Regulatory Affairs Department monitors, engages in and influences proceedings, proposed policies and legislation that directly or indirectly impact Community Power's operations and customers. Under the guidance of the chief operating officer and leadership of the senior director of Regulatory and Legislative Affairs, the department represents Community Power's interests before the California Public Utilities Commission (CPUC), California Energy Commission (CEC), California Air Resources Board (CARB), California Independent System Operator (CAISO), the state Legislature and Congress, as well as at the federal level with relevant federal agencies, including but not limited to the Department of Energy and Federal Energy Regulatory Commission (FERC).

The department also supports regulatory compliance across multiple state agencies, assists with agencywide understanding of policy impacts and develops strategies for securing external funding and favorable regulatory outcomes. Community Power participates in trade associations such as CalCCA and works collaboratively with member agencies, industry partners and stakeholders across the state to ensure community choice remains a resilient and effective tool for climate action and energy equity.

The department's work is guided by Community Power's Regulatory and Legislative Platform, which outlines the agency's values-based approach to policy and advocacy, anchored in accelerating deep decarbonization, promoting local development and stabilizing community choice energy. The platform provides clear guidance for consistent engagement at the local, state and federal levels and ensures that policy advocacy reflects Community Power's mission and customer priorities. View the platform here.

Department Highlights

- Monitored and/or engaged in over 60 regulatory proceedings and associated policy working groups
- Provided analysis on approximately 150 pieces of legislation per year affecting Community Choice Aggregators and issued letters of support on approximately 10 pieces of legislation per year (all legislative letters issued by Community Power can be viewed here)
- Participated in CalCCA's regulatory and legislative committees and tiger teams to advocate for inclusion of Community Power policy priorities in trade association filings and letters
- Developed Community Power's federal funding strategy and assisted with competitive grant applications

• Updated Community Power's Regulatory and Legislative Platform, available on Community Power's website

FY 2025-2026 Priorities

- · Continually engage policymakers to ensure alignment with Community Power's strategic priorities
- · Sponsor or support state and federal legislation that promotes affordability, equity and local clean energy
- · Advance regulatory outcomes that uphold procurement and rate-making authority for Community Power
- Identify and pursue grant and funding opportunities that benefit customers and member agencies
- Actively participate in trade associations and multi-agency coalitions to shape the policy landscape
- · Track and manage compliance obligations to ensure timely and accurate filings

Key Performance Indicators (KPIs)

- Number of regulatory proceedings tracked (target: 40+)
- Number of bills analyzed (target: 100+)
- · Legislative positions advanced in alignment with platform (target: 10+)
- · Number of unique interactions with state and federal policymakers (target: 50+)
- · Grant or funding applications supported in coordination with internal and external partners (target: three or more)

TABLE 14. REGULATORY AND LEGISLATIVE AFFAIRS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Regulatory and Legislative Affairs	5.0	*5.0

^{*0.7} positions will be externally funded in FY26

Department Organizational Structure

FIGURE 39. REGULATORY AND LEGISLATIVE AFFAIRS ORGANIZATIONAL STRUCTURE

Regulatory and Legislative Affairs

Senior Director of Regulatory and Legislative Affairs

Associate Director of Legislative Affairs Senior Policy Manager Senior Strategic Policy Manager Regulatory Manager

Human Resources and Administration

Fostering a high-performing, inclusive workplace through strategic talent development and operational excellence

Department Description: Mission and Services

The Human Resources and Administration Department serves as a strategic partner to leadership and staff, building the internal systems needed to support a high-performing, mission-aligned organization. The department combines two core functions - human resources and administrative operations – under a unified team that enables employee success and ensures internal consistency and support across all departments.

Human Resources (HR) leads efforts in recruitment, onboarding, benefits administration, compliance, professional development and performance management. These services are delivered in alignment with Community Power's values of integrity, innovation, servant leadership and collaboration.

The administrative team supports agencywide operations by managing internal documentation, scheduling, communications, executive support and coordination across departments. This function plays a vital role in maintaining day-to-day efficiency and ensuring smooth execution of internal processes.

FY 2025-26 marks the first full year of operations with a fully in-house HR team. With the addition of the administrative function, the department is well-positioned to drive internal excellence and provide responsive, effective support to employees, leadership and the Board of Directors.

Department Highlights

- · Brought the administrative team alongside the internal HR team
- · Established internal HR systems for onboarding, hiring and staff support
- · Partnered with Paychex and other vendors to streamline benefits administration
- · Rolled out agencywide training programs and began design of a performance management framework
- · Supported hiring and onboarding across the agency as Community Power reached 80 authorized FTEs

FY 2025-2026 Priorities

- Evolve into a learning organization with robust professional development by Q4 2026
- · Ensure that all staff receives annual safety and workplace training

- Refine and launch internship program to attract students from local colleges and underrepresented communities interested in the clean energy industry
- · Finalize and implement a three-year staffing plan and internal job board
- · Fully integrate administrative functions into the larger People Operations team
- Maintain employee satisfaction levels above 80% through annual surveys and onboarding feedback
- Develop a cadence for internal and external team events and activities that intentionally shapes our culture in alignment with our mission, vision, values and goals (MVVGs)

Key Performance Indicators (KPIs)

- Headcount (78)
- Hired (22)
- Departed (four)
- Turnover Rate (target 5.6%)
- Time-to-fill for key positions (target: 78 days)

TABLE 15. HUMAN RESOURCES & ADMINISTRATION POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Human Resources and Administration	4.0	*6.0

^{*1} position will be externally funded in FY26

Department Organizational Structure

FIGURE 40. HUMAN RESOURCES AND ADMINISTRATION ORGANIZATIONAL STRUCTURE

Human Resources and Administration

Senior Director of People Operations & Administration

Human Resources Manager Talent Acquisition and Learning Specialist **Human Resources Coordinator** Senior Executive Assistant Office Manager Administrative Assistant

Legal

Providing legal guidance, ensuring compliance, transparency and accountability to support organizational integrity

Department Description: Mission and Services

The Legal Department is led by Community Power's general counsel, who reports directly to the Board of Directors and serves as a member of the Executive team. Under the leadership of the general counsel, the department provides legal guidance across a range of areas including public agency governance, regulatory compliance, contract law, employment law and risk management.

The department plays a critical role in supporting internal policy development, mitigating organizational risk and maintaining transparency in all agency actions. As Community Power expands in scale and complexity, the department ensures the agency's decisions and operations remain aligned with local, state and federal legal requirements and uphold public trust.

Department Highlights

- Established Community Power's first in-house Legal Department under general counsel leadership
- Hired two in-house attorneys to expand internal legal capacity
- Developed and implemented internal templates and review processes for contracting and risk mitigation
- Provided legal review and support for long-term power purchase agreements (PPAs) and clean energy prepay transactions
- · Reviewed and updated internal policies and supported compliance with the Brown Act and other transparency laws

FY 2025-2026 Priorities

- · Support execution of three to five clean energy prepay transactions and associated legal review
- · Provide legal guidance on long-term PPAs and related procurement efforts
- · Review and update Board policies, bylaws and internal procedures
- Provide support for the launch of major customer programs, including Solar Battery Savings and the San Diego Regional **Energy Network (SDREN)**
- · Expand legal training and education for agency staff and elected officials

TABLE 16. LEGAL POSITIONS

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
Legal	2.0	3.0

Department Organizational Structure

FIGURE 41. LEGAL ORGANIZATIONAL STRUCTURE

Legal
General Counsel
Assistant General Counsel Senior Counsel *Paralegal

^{*}Position authorized in FY26





Budget by Level 2 and Level 3

Operating Revenue

Community Power's sole source of revenue currently is the retail sale of electricity to its customers. Revenue budgeted for FY 2025–2026 reflects a full fiscal cycle of retail sales to our commercial and industrial customer base as well as the majority of the residential customer base.

Generally, operating revenue through the retail sale of electricity is derived by: 1) estimating Community Power's energy load for the upcoming fiscal year; 2) applying the Board-approved generation rates to the energy load; and 3) applying a 1.75% uncollectible rate based on revenue that Community Power does not expect to collect — the result is Community Power's operating revenue for the fiscal year.

Community Power offers four service levels to its customers which, taken together, ultimately comprise the source of ratepayer funds for the agency:

- 1. PowerOn, our standard service offering that provides 55% renewable power (and 11.7% carbon free) and provides a 3% discount compared with SDG&E's rates
- 2. Power100, our premium service that provides customers with 100% renewable and carbon-free energy and is currently priced at a \$0.01/kWh added to the PowerOn service

- 3. Power100 Green+, our stand-alone 100% renewable and carbon-free service that is Green-e® certified, available only to commercial and industrial customers and currently priced at a \$0.02/kWh adder to the PowerOn service
- 4. PowerBase, our most affordable service option with renewable content that is intended to meet or exceed that of SDG&E whenever possible and provides customers with a 5% discount compared with SDG&E's rates currently in effect as of February 1, 2025

Additional assumptions for net operating revenue include:

- · Enrollment of customers is complete for all member jurisdictions
- A 95% participation rate across all jurisdictions
- · A 1.75% uncollectible rate that is a decrease from the 4.5% uncollectible rate assumed in the prior year budget
- · Trifurcation of rates continues to ensure a fair, equitable and balanced rate structure across customers with differing vintage years
- · Rates remain at the levels adopted by the Board on February 7, 2025, retroactive to February 1, 2025. Any rate changes are subject to Board approval.

TABLE 17. OPERATING REVENUE BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Gross Ratepayer Revenues	1,365.7	1,233.4	1,233.4
(Less 4.5% Uncollectible Customer Accounts)	(61.5)	(55.5)	(55.5)
Net Operating Revenues	1,304.3	1,177.9	1,177.9

^{*}Amounts displayed in millions of dollars

Cost of Energy

The cost of energy is Community Power's largest expense. Generally, the cost of energy is derived by: 1) estimating Community Power's energy load for the upcoming fiscal year; 2) applying energy already contracted for to the projected energy load; and 3) applying forward market prices to the remaining energy load that Community Power has not yet contracted for — the result is Community Power's cost of energy for the fiscal year.

Community Power prioritizes purchasing electricity that is generated from renewable sources like solar or wind. The agency purchases enough electricity to cover the needs of our customers. SDG&E delivers this electricity through its existing power lines and continues to provide meter reading, billing and line maintenance to customers.

While Community Power emphasizes its commitment to clean energy, there are factors that can influence the cost of this energy for Community Power, impacting the overall cost of energy for the company. The following topics are key considerations:

- Market Fluctuations Unlike traditional energy sources with more stable pricing, renewable energy sources like solar and wind are subject to fluctuations in the electricity market. This means that during periods of lower renewable energy production or higher demand, Community Power may need to purchase additional power from the market, potentially at a higher cost. These costs can then be passed on to customers.
- Seasonal Variations San Diego could experience significant heat waves in the summer months. During these periods, peak electricity demand rises due to increased

- usage of air conditioning. This can put a strain on renewable energy sources, forcing Community Power to supplement with power from the market, potentially at a premium, similar to market fluctuations.
- Increased Load Community Power's customer base is projected to remain steady; however, the overall demand for electricity (load) is projected to increase as California transitions to sourcing from more renewable energy. To maintain grid reliability, Community Power may need to secure additional power sources, potentially impacting the cost of energy.

Beyond market-driven factors, regulations such as resource adequacy (RA) requirements play a role in Community Power's energy costs. The California Public Utilities Commission (CPUC) mandates RA requirements. These require Community Power to procure a predetermined amount of electricity based on its projected load. This ensures a consistently reliable grid with sufficient energy available. Meeting these RA requirements might necessitate purchasing additional power, especially during peak demand periods, potentially at higher costs.

The potential for cost increases due to these factors is a tradeoff inherent in pursuing renewable energy. While costs may fluctuate, Community Power's commitment to clean energy aligns with California's sustainability goals.

It's important to note Community Power strives to offer competitive rates compared with traditional energy providers. The agency achieves this through various strategies, including long-term power purchase agreements and a diverse renewable energy portfolio to mitigate market fluctuations.

TABLE 18. COST OF ENERGY BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Cost of Energy	1,020.8	1,116.8	956.7

^{*}Amounts displayed in millions of dollars

Professional Services and Consultants

Professional Services and Consultants includes SDG&E fees. data management fees from Calpine, technical support, legal/regulatory services and other general contracts related to IT services, audits and accounting services.

- SDG&E Service Fees Service fees paid to SDG&E consist of a charge of a fixed fee per account per month. The roll out of all enrollment phases adds significant costs compared to FY 2025-2026. 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 This is a 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.
- Technical Support Community Power engages consultants to assist with load forecast and scheduling our energy purchases. After electric power is scheduled for delivery to customers and ultimately consumed by those customers, the actual electricity consumption must be trued up against the forecasted and scheduled energy. This true-up occurs through the settlement process. Settlements also entail addressing a number of other market and regulatory requirements.
- Legal/Regulatory Services Community Power retains legal counsel to assist with the complex aspects of the regulatory and compliance issues and power supply contract negotiations as well as its general legal needs. This line item will also allow for the retention of both a state and a federal lobbyist to support Community Power's legislative and regulatory efforts.
- Other Services Community Power contracts or plans to contract for IT services, audit services (data and financial), accounting services and other services as needed. Community Power continues to examine if these services are more cost effective or efficient to bring in-house; in particular, Community Power is growing its internal IT function and expecting a reduction in its IT Services professional services agreement.

TABLE 19, PROFESSIONAL SERVICES AND CONSULTANTS BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Data Management	13.5	14.6	14.8
SDG&E Fees	3.4	3.4	4.0
Legal/Regulatory	1.5	2.1	1.7
Other Services	2.1	2.1	2.0
Technical Support	1.3	2.1	2.1
Professional Services and Consultants	22.3	24.3	24.6

^{*}Amounts displayed in millions of dollars

Personnel Costs

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 increases.

The recruitment strategy includes the addition of approximately seven new staff members during the FY 2025-2026 budget cycle, growing the agency to 94 total staff.

TABLE 20. PERSONNEL COSTS BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Salaries	9.1	14.1	15.4
Benefits (retirement/health)	1.8	2.6	3.3
Payroll Taxes	0.6	1.0	1.2
Accrued PTO	0.1	0.9	1.2
Personnel Costs	11.7	18.6	21.1

^{*}Amounts displayed in millions of dollars

Marketing and Outreach

Marketing and Outreach includes expenses for mandatory rate mailers, communication consultants, mailers, printing, sponsorships, and partnerships to inform the community of Community Power. Marketing and outreach are further broken down into the following Budget Level 3 categories:

Printing — The agency is periodically required to send mailers to its customers notifying the community about several aspects of rates including changes to rates through Joint Rate Comparisons.

Marketing and Communications — An important focus of Community Power is ensuring the community is informed about Community Power and that we build professionallevel name recognition and trust and provide education. This also covers the design of all required notifications sent out to customers, including opt-out procedures and rate comparisons as well as other notices or educational or marketing information.

Partnerships/Sponsorships/Local Memberships — In addition to required noticing, Community Power performs outreach to educate the community of the benefits of community choice and to encourage awareness of our mission. This comes in the form of media advertising, sponsorships of community events and organizations, and mailers as well as targeted customer communications.

TABLE 21. MARKETING AND OUTREACH BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Printing	2.4	1.2	0.8
Partnerships/Sponsorships/Local Memberships	1.2	1.2	1.1
Marketing and Communications	0.6	0.7	0.8
Marketing and Outreach	4.1	3.0	2.6

^{*}Amounts displayed in millions of dollars

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, professional development, etc.

Programs

Given the small size of the Budget Level 2 category for Programs, Community Power is removing this budget category in FY 2025-2026.

TABLE 22. GENERAL AND ADMINISTRATION BY BUDGET LEVEL 2 AND LEVEL 3*

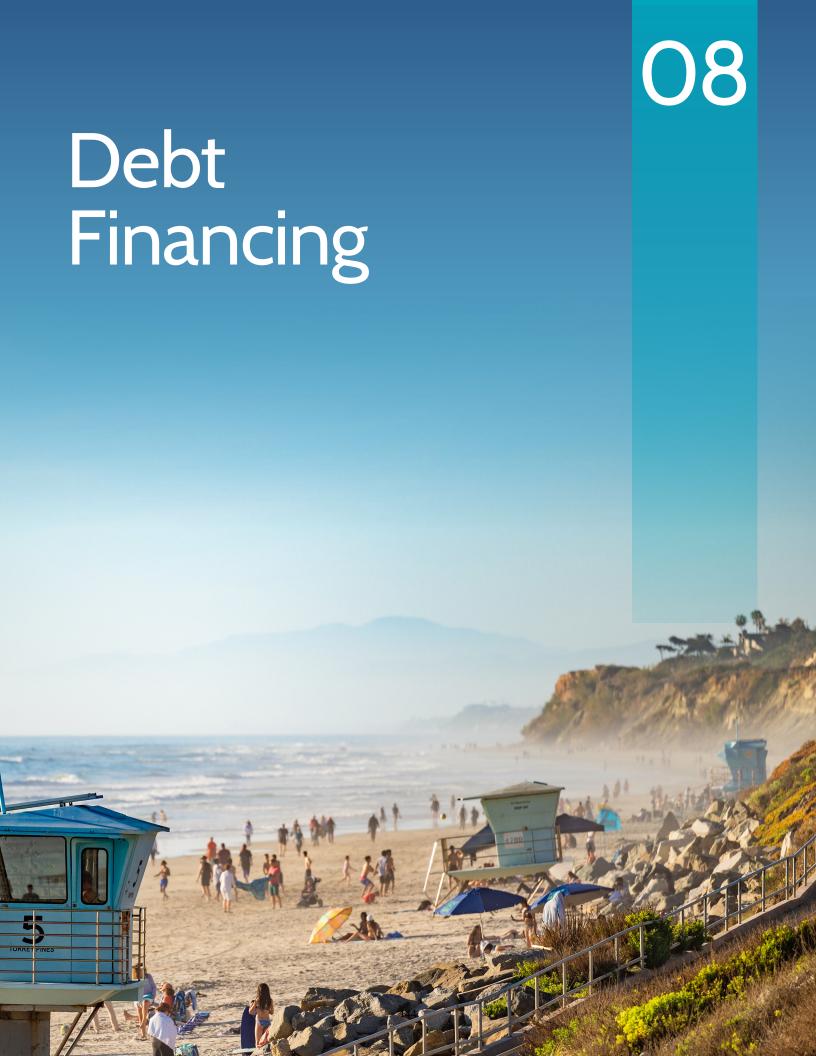
	FY24 Amended	FY25 Amended	FY26 Proposed
Other G & A	5.7	3.6	4.0
Cal CCA Dues	0.4	0.5	0.6
Rent	0.4	0.7	0.9
Partnerships/Sponsorships/Memberships	0.0	0.0	0.0
Insurance	0.1	0.1	0.3
General and Administration	6.6	4.9	5.9

^{*}Amounts displayed in millions of dollars

TABLE 23. PROGRAMS BY BUDGET LEVEL 2 AND LEVEL 3*

	FY24 Amended	FY25 Amended	FY26 Proposed
Programs	0.7	0	0
Programs	0.7	0	0

^{*}Amounts displayed in millions of dollars



Debt Financing

Credit Facility

On January 23, 2023, the Community Power Board approved a new credit agreement to implement a new line of credit of \$150 million from a JP Morgan credit facility. Subsequently, on October 25, 2024, the Community Power Board approved an amendment to increase the credit facility to \$250 million.

The Credit Agreement with JP Morgan provides for a \$250 million multi-use revolving line of credit. This credit facility includes an up to 5-year term from the date of renewal. The funds are available for general corporate purposes including line-of-credit draws, collateral postings and postings for the provider of last resort collateral requirements.

Community Power does not anticipate needing to use its credit facility to finance operations in FY 2025-2026 but periodically may access the credit facility for one-time needs. In FY 2024–2025, Community Power accessed \$47.0 million from the credit facility and satisfied the loan payment in December 2024. Currently, Community Power has zero debt. However, Community Power still pays debt service fees to maintain its \$250 million credit facility and to satisfy fees related to standby letters of credit.

TABLE 24. DEBT PAYMENTS*

Year ended June 30, 2025	Beginnings	Additions	Payments	Ending
Bank note payable	-	47.0	47.0	-
Loans payable	-	-	-	-
Total	-	47.0	47.0	-

^{*}Amounts displayed in millions of dollars

Debt Considerations

The Community Power Board has taken several important steps to potentially achieve an investment-grade credit rating that includes, among many items:

- Developing a Reserve Policy to increase liquidity
- · Establishing and funding an Operating Reserve
- Adopting strategic goals that build to 180 days' cash on hand, ultimately leading to an investment-grade credit rating
- · Approving rates effective February 1, 2025, that potentially allow Community Power to achieve 180 days' cash on hand in calendar year 2025

After an investment-grade credit rating is achieved, Community Power will have an enhanced ability to issue taxexempt or taxable bonds to finance ownership in energygeneration or energy-storage assets. Direct asset ownership may provide the opportunity to control energy cost.

Community Power's ability to issue tax-exempt debt to finance an ownership interest in a generating or storage facility is a distinct advantage over investor-owned utilities and direct access providers. There are no specific asset purchases currently under consideration by staff.

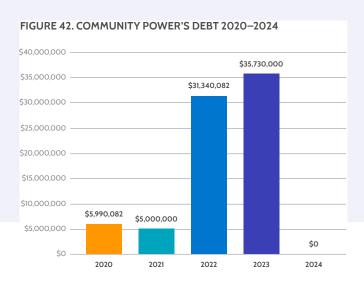
The Debt Policy enables Community Power to issue bonds that will ultimately be subject to Board approval as a separate action. The Debt Policy will help Community Power take advantage of ownership opportunities that may arise, especially in conjunction with state or federal funding that might be available. To date, Community Power has not issued debt.

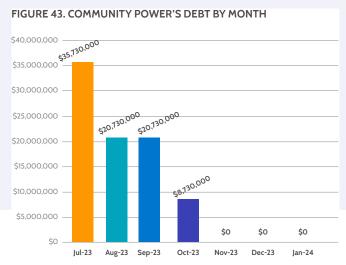
The Debt Policy articulates:

- The situations and steps necessary for the issuance of debt
- The types of debt that may be issued
- · How the debt fits into Community Power's strategic plan and potential capital investment program

The Debt Policy also includes sections to:

- · Facilitate decision making
- Establish basic parameters and principles
- · Articulate and clarify other related aspects to guide future Boards, staff and consultants





The Community Power debt policy also includes additional requirements as follows:

- Green Bonds To the extent possible, Community Power bond issuances shall be green bonds. A green bond is a type of fixedincome instrument that is specifically earmarked to raise money for climate and environmental projects.
- 1.5x Max Annual Debt Service While the specific formulation of the Additional Bonds Test may vary depending on the type of bonds being contemplated, Community Power will utilize an Additional Bonds Test that establishes a limitation on new issuances such that the pledged revenues are no less than one and a half times (1.5x) the maximum annual principal and interest and debt service for the aggregate outstanding senior lien bonds, including the debt service for the new issuance.
- 5% Annual Debt Service Limit Community Power will also seek to maintain aggregate annual debt service on long-term debt at a level not to exceed 5% of Community Power's annual total operating expenses. The actual terms and conditions specific to each debt issue will be controlled by the applicable documents.

09

Financial Policies



Financial Policies

Budget Policy

Purpose

This policy ("Policy") establishes San Diego Community Power's (SDCP's) timeline for annual budget preparation and for discretionary budget adjustments. This Policy is adopted pursuant to Government Code Section 6508 et seg. and must be adopted or amended by resolution.

Budget Guidelines

On October 1, 2019, the Founding Members of SDCP adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021. There are several sections of the JPA that guide the development and management of the budget.

- Section 4.6 Specific Responsibilities of the Board. 4.6.2 Formulate and adopt an annual budget prior to the commencement of the fiscal year.
- Section 7.2 Depository. 7.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its policies and procedures.
- · Section 7.3 Budget and Recovery Costs. 7.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of SDCP shall be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval. 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.

Budget Preparation

The Chief Financial Officer (CFO) begins the annual budget process in February of any given year. The Finance department develops initial revenue and expense estimates and updates its short-term financial plan. In March and April, SDCP staff develop and refine budget proposals to develop an initial budget baseline for the Agency for the upcoming budget year. The budget is further refined through strategic planning sessions and through the SDCP Finance and Risk Management Committee.

The CFO will then be required to prepare and submit to the SDCP Board of Directors (Board) a draft proposed budget for the next following fiscal year in May, or no later than the second month immediately preceding the start of the respective fiscal year. The budget shall be in alignment with established goals and shall reflect all activities including operating programs, revenues, and expenditures. The budget shall be approved by the Board at a public meeting in June, or no later than the month immediately preceding the start of the respective fiscal year.

CEO and CFO Authority

The Chief Executive Officer (CEO) or CFO will have the discretion to authorize expense transfers from line items between and within SDCP's budget level 2 categories as established and approved in the annual budget process by the SDCP Board, provided that net transfers total \$150,000 or less from the budget category.

For example, within the Professional Services and Consultants budget level 2 category, the CFO may authorize that \$150,000 move from the Data Management to the Technical Support budget level 2 categories, provided that the total Professional Services and Consultants budget level 2 category remains the same.

TABLE 1. EXAMPLE: EXPENSE TRANSFERS WITHIN BUDGET LEVEL 2 CATEGORIES

Professional Services and Consultants	FY23 Original Budget	FY23 Amended Budget	Change
Data Management	\$10,541,810	\$10,391,801	\$(150,000)
Legal/Regulatory	\$1,330,000	\$1,330,000	\$-
Other Services	\$1,111,000	\$1,111,000	\$-
SDG&E Fees	\$2,563,226	\$2,563,226	\$-
Technical Support	\$1,335,000	\$1,485,000	\$150,000
Total Prof. Svcs. Expenses	\$16,881,036	\$16,881,036	\$-

Additionally, for example, the CEO may authorize that \$150,000 move from the Professional Services and Consultants to the General Administration budget level 2 categories.

TABLE 2. EXAMPLE: EXPENSE TRANSFERS BETWEEN BUDGET LEVEL 2 CATEGORIES

Budget Level 2	FY23 Original Budget	FY23 Amended Budget	Change
Cost of Energy	\$661,638,828	\$661,638,828	\$-
General and Administration	\$2,591,363	\$2,741,363	\$150,000
Marketing and Outreach	\$4,164,167	\$4,164,167	\$-
Personnel Costs	\$7,951,499	\$7,951,499	\$-
Programs	\$1,395,000	\$1,395,000	\$-
Debt Service	\$1,314,922	\$1,314,922	\$-
Total Prof. Svcs. Expenses	\$695,936,815	\$695,936,815	\$-

The CEO under his or her discretion may still require approval of the Board for any budget changes that may fall under the discretion of the Policy. Amendments to the annual budget as approved by the Board will reset the original appropriation (revenue or expense) for the fiscal year for the purposes of the Policy.

Balanced Budget

A balanced budget shall exist when the total projected revenues are greater than or equal to total projected expenses. Total revenues shall include all revenues from retail and wholesale sales of electricity. Total expenses shall include all operating expenses, program expenses, and contributions to reserve funds. Any year-end surplus will be used to maintain reserve levels. Any decrease in revenues and or increase in expenditures that causes the budget to become imbalanced will require an amended budget. The CFO shall prepare a proposed amended budget and submit to the Board for approval.

Financial Reserves Policy

Purpose

San Diego Community Power (SDCP) will maintain Financial Reserves (Reserves) as described in this policy to:

- · Meet SDCP's strategic objectives
- · Secure, maintain, and/or improve a standalone investment grade credit rating
- · Secure favorable terms with vendors, including power producers
- · Satisfy working capital requirements
- · Adhere to contractual covenants
- Provide funds to cover unanticipated expenditures
- Support rate stability

Policy Guidelines

SDCP's financial reserve goal is to secure 180-days of cash on hand.

The contribution to Reserves is determined through SDCP's annual budget process as defined in the agency's Budget Policy and/or SDCP's rate setting process as defined in the agency's Rate Development Policy. To the extent SDCP is ability to meet operational expenses and maintain competitive rates, SDCP will establish rates and adopt budgets with the goal of building and maintaining Reserves at or above the 180-days of cash on hand target level.

Definitions

- Days cash on hand: unrestricted cash and cash equivalents x 365 / (operating expenses for the current fiscal year)
- · Reserves: Net position
- Use of Reserves: A projected or estimated reduction in the amount of reserves by the end of a fiscal year below the sum of the balance of the reserves at the commencement of the fiscal year plus the projected addition to the Reserves in the budget for the current fiscal year.

Reserve Review

Reserves and annual contributions will be reviewed on an annual basis as part of SDCP's budget process. Reserves will also be reviewed at the completion of SDCP's annual audit to reconcile the Reserve balance.

Reserve Distribution

If reserves exceed the 180-days of cash on hand target level established in this policy, the Board may authorize reserve

distributions as follows.

- Strategic Uses: Use excess funds for capital projects, financing programs, paying down existing debt, rate reductions, or other strategic purposes.
- Stabilization Reserve: Use excess funds to fund a Rate Stabilization Reserve. A Stability Reserve mitigates financial and cost of energy risk due to cyclical cost of energy fluctuations and rate shocks and may maintain compliance with financial covenants. The purpose of this reserve would be to provide budgetary stabilization and not to serve as an alternative funding source for new programs.
- Programmatic Reserve: Use excess funds to establish a contingency for programs and projects. Specifically, this Reserve could fund unforeseen and unexpected needs such as cost overruns, local leveraging or matching for external funds, or other programmatic needs as required.

Conditions for Use of Reserves

- Temporary reductions in Reserves for cash flow purposes to even out the expected peaks or dips in revenues and expenditures are normal cyclical occurrences to be expected during the fiscal year, and do not constitute a use of reserves. Transfers to and from Reserves to account for such temporary cash flow fluctuations is within the discretion of the CFO.
- The CEO will have the discretion to authorize the use of reserves during the fiscal year up to the lesser of 10% of the year's total budgeted costs, or \$100 million, for the following purposes:
 - 1. Cover increases in power supply expenses due to spikes in costs and/or due to higher customer demand:
 - 2. Meet any margin or collateral posting requirements under energy supply contracts; and
 - 3. Provide resources to meet emergency expenditures.
- · Any further use of reserves as necessary or desirable, must be recommended by the CEO to the Board for approval of such use.
- Any use of the reserves under the CEO's authority shall be reported to the Board at the next regularly scheduled meeting

Policy Review

SDCP staff will complete a periodic review of this Financial Reserve Policy to ensure that the policy meets the needs of the organization.

Procurement Policy

Purpose

It is in the interest of San Diego Community Power (SDCP) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Policy

1. Procurement of Professional Services

SDCP may contract for professional services, including but not limited to consultant, legal, or design services, in its sole discretion. SDCP shall procure professional services in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. SDCP shall endeavor to secure the highest quality professional services available and is not required to award a contract for services to the lowest proposer.

2. Procurement of General Services

SDCP may contract for general services, including but not limited to cleaning or maintenance services, in its sole discretion. SDCP shall procure general services in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. Although SDCP shall not be required to award to the lowest proposer, SDCP staff shall seek to procure general services at the lowest costs.

3. Procurement of Supplies

SDCP shall procure supplies in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. Although SDCP shall not be required to award to the lowest proposer, SDCP staff shall seek to purchase supplies at the lowest costs. SDCP is encouraged to jointly procure supplies with other governmental agencies to obtain the lowest cost when possible. In the event one or more SDCP employees are designated as purchasing agents, those individuals shall be included in SDCP's Conflict of Interest Code as persons who must file an annual statement of economic interest.

4. Procurement of Public Works Projects

SDCP shall comply with California Public Contract Code Section 20160 et seq. and other applicable laws and regulations when procuring public projects in excess of \$5,000. For purposes of this section, a "public project" shall have the same meaning as defined in Public Contract Code Section 20160, and includes, among other things, projects for the erection, improvement, painting, or repair of public buildings and works.

5. Competitive Procurement Requirements

· Formal Bidding. SDCP shall issue a request for proposals (RFP), a request for qualifications (RFQ), or similar competitive instrument for the purchase of goods or services in excess of \$125,000 in any given contract year or term. Proposals shall be evaluated in accordance with Section 7 of this Policy. These contracts are subject to Board approval before final execution.

a. Informal Bidding Procedures.

- i. For contracts valued between \$50,000 and \$124,999,99, staff shall solicit informal written proposals from at least three providers, if feasible. An informal written proposal consists of a written proposal that includes the provider's name, address, phone number, professional license number (if applicable), the work to be performed, and the amount of the proposal. A written proposal may be in an electronic format.
- ii. For contracts valued between \$10,000 and \$49,999.99, staff shall solicit informal verbal proposals from at least three providers. Staff shall note the three verbal proposals by including the provider's name, address, phone number, and amount of the verbal proposal in SDCP's records.
- iii. For contracts valued at less than \$10,000, no formal or informal proposals shall be required, but SDCP staff is directed to seek the lowest cost supplies and the highest quality services available.
- iv. The Chief Executive Officer ("CEO"), at his or her discretion, may direct that SDCP solicit competitive procurements through the formal bidding process for contracts under \$125,000.
- b. Informal Bidding Procedures. The provisions below shall apply to all methods of procurement described above.
- · When procuring goods and services utilizing state or federal funds (e.g., grant or loan funds), SDCP shall comply with all state or federal project requirements in securing any goods or services necessary. If there is conflict between the foregoing, the more restrictive requirements shall apply.

- SDCP shall not be required to award a contract to purchase goods or services from the lowest responsible bidder, unless required by California law.
- No SDCP officer or employee shall split purchases into more than one purchase in order to avoid the Competitive Procurement Requirements in this Policy
- · No SDCP officer or employee shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended to reward or be an inducement for conducting business, placing orders with, or otherwise using the officer's or employee's position to secure a contract with SDCP.

c. Exceptions to Competitive Procurement Requirements.

- Based on the unique facts or circumstances described below and a written justification retained in SDCP's records, the CEO, after consultation with the General Counsel, may waive one or more purchasing procedures in this Policy and/or use sole source procurement if the CEO determines that the best interests of SDCP are served; provided. however, that such method is not in violation of applicable law or policy.
- · Based on the unique facts or circumstances described below and a written justification retained in SDCP's records, the CEO, after consultation with the General Counsel, may waive one or more purchasing procedures in this Policy and/or use sole source procurement if the CEO determines that the best interests of SDCP are served; provided, however, that such method is not in violation of applicable law or policy. Sole source purchasing is authorized when the goods or services contemplated are capable of being supplied or performed by a sole provider, such as the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service. Sole source procurement may also be utilized when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of SDCP to utilize sole source procurement. The following factors shall not apply to sole source procurements and shall not be included in the sole source justification: personal preference for product or vendor; cost, vendor performance, or local service (this may be considered an award factor in competitive procurements);

features that exceed the minimum requirements for the goods or services; explanation of the actual need and basic use for the equipment, unless the information relates to a request for unique factors.

- ii. No competitive procurement shall be required for goods or services valued at less than \$10,000 in any one contract term or contract year.
- iii. No competitive procurement shall be required to rent or lease equipment.
- Competitive procurement shall not be required when the contract, goods or services will be provided by another governmental agency. SDCP can rely on the competitive procurement process provided by another governmental agency, provided that such agency's procurement is in compliance with California law.
 - iv. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.

6. Signing Authority:

SDCP's CEO and designated staff are authorized to execute contracts and related documents in accordance with SDCP's Delegated Contract Authority Policy.

7. RFP/RFQ Issuance and Proposal Evaluation

- Proposals received through formal bidding procedures shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant SDCP staff and an evaluation committee selected by the CEO or, at the discretion of the Board, members of a designated Board committee. Proposals received shall be evaluated based on competency to perform the scope of work, best fit, price competitiveness, compliance with subsections i (San Diego County Preference) and ii (Other Preferences) below, and other additional criteria added pursuant to SDCP's Inclusive and Sustainable Workforce Policy. The preferences below may not apply to procurements conducted jointly with other public agencies, and shall not apply when prohibited by state or federal statutes or regulations that require award to the lowest responsible bidder. Proposers may only pursue two of the four preferences.
 - i. Businesses with office(s) located in San Diego County and include at least 25% San Diego County residents under their employment shall receive a bonus of up to 5 points or 5% out of a 100-point scoring system in

competitive solicitations. To receive the preference, a proposer must submit written information relating to the location of its office(s) in San Diego County and the percentage of San Diego County residents under its employment.

- · Businesses certified as disabled veteran business enterprises as by the Supplier Clearinghouse (the supplier clearing house.com) shall receive a bonus of up to 5 points or 5% out of a 100-point scoring system in competitive solicitations. To receive the preference, a proposer must submit proof of current, valid certification by the Supplier Clearinghouse. Such proof shall be subject to verification by SDCP.
- Businesses certified as a Persons with Disabilities business enterprise by the Supplier Clearinghouse or Disability: IN shall receive a bonus of up to 5% or 5 points out of a 100 point scoring system in competitive solicitations. To receive the preference, a proposer must submit proof of current, valid certification by the Supplier Clearinghouse or Disability: IN. Such proof shall be subject to verification by SDCP.
- Businesses certified as small business by the Department of General Services shall receive a bonus of up to 5% or 5 points out of a 100-point scoring system in competitive solicitations. To receive the preference, a proposer must submit proof of current, valid certification by the Department of General Services. Such proof shall be subject to verification by SDCP.
- · SDCP is committed to the highest standards of responsible behavior and integrity in all of its business relationships. SDCP will consider a company's business practices, environmental record, and commitment to fair employment practices and compensation in its procurement decisions.

8. Nondiscrimination Contract Clause

Each SDCP contract and subcontract shall contain a nondiscrimination clause that reads substantially as follows: Contractor 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 subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

9. Information on Supplier Diversity Public Utilities Code Section 366.2(m) requires certain community choice aggregators, including SDCP, to

annually submit to the CPUC: (1) a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises; and (2) a report regarding its procurement from women, minority, disabled veteran, and LGBT business enterprises.

General Order 156 (GO 156), adopted by the California Public Utilities Commission (CPUC), requires certain California public utilities to engage in outreach activities and meet specific procurement goals from women, minority, disabled veteran, persons with disabilities, and LGBT business enterprises. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Supplier Clearinghouse database (www.thesupplierclearinghouse.com).

To assist SDCP with its reporting obligations under Public Utilities Code Section 366.2(m) and with evaluating its supplier outreach and other activities, proposers that are awarded the contract will be asked to voluntarily disclose their certification status with the CPUC Clearinghouse, as well as their efforts to work with diverse business enterprises, including WBEs, MBEs, DVBEs, and LGBTBEs.

Except as otherwise expressly provided under this Policy and/or required by applicable state or federal law or funding requirements (including, without limitation, any grant or loan conditions), SDCP shall not use any demographic information received from potential vendors in any way as part of its decision-making or selection process. Rather, SDCP will use such information solely for compliance with its reporting obligations to the CPUC and evaluation of SDCP's outreach and other activities consistent with applicable law. Pursuant to Article I, Section 31 of the California Constitution, SDCP shall not discriminate against or give preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin except as otherwise allowed therein.

10. Procurement of Power and Energy Attributes

SDCP must secure sufficient power resources and energy attributes to serve its customers, comply with State law, and meet Community Power's and its member agencies' goals. Community Power has adopted an Energy Risk Management Policy authorizing certain Community Power staff to enter into power purchase agreements and other agreements to secure power and energy attributes. This Procurement Policy shall not apply to the acquisition of power or energy attributes.

11. Review and Approval as to Form by General Counsel All SDCP agreements must be approved as to the form and content by the General Counsel or his/her designee prior to signature by any authorized individual.

Debt Policy

Subject

Debt Policy

Policy Guidelines

This Debt Policy ("Policy") establishes San Diego Community Power's ("SDCP") Debt Policy. The Policy articulates: (1) the situations and steps necessary for the issuance of debt; (2) the types of debt that may be issued; and (3) how the debt fits into SDCP's capital investment program (CIP), Community Power Plan, integrated resource plan, or strategic policy goals.

This Policy is adopted pursuant to Senate Bill 1029 (Hertzberg, 2016) and Government Code Section 8855 et seq. and must be adopted or amended by resolution. The SDCP Board of Directors ("Board") is required to adopt a formal Debt policy before any debt can be used.

Background

The SDCP Board adopts budgets and establishes and adjusts rates, as appropriate, each fiscal year to provide sufficient revenues to pay all operating expenses, make required payments and comply with commitments on all other debts or financial obligations of the Agency. SDCP is committed to long-term financial planning, maintaining appropriate reserve levels, and employing prudent practices in governance, management, and budget administration. The Community Power Board further adopted its Strategic Plan on June 23, 2022, which included the goal to adopt financial controls and policies to meet or exceed best practices and manage risk.

SDCP utilizes financial policies that foster financial stability, support fiscal discipline, and enable SDCP to maintain strong investment-grade credit ratings.

This Policy confirms the commitment of the SDCP Board, management, staff, advisors and other decision makers to adhere to sound financial management practices, including full and timely repayment of all borrowings, allowing continuing ready access to the capital markets to achieve the most effective cost of capital within prudent risk parameters. The goals and objectives of this Policy are as follows:

- Maintain cost-effective access to capital markets
- · Maintain a prudent level of financial risk
- · Preserve future financial flexibility
- Finance capital projects, acquisitions, or improvements in a timely and cost-effective manner
- · Manage debt effectively within SDCP Board established objectives and parameters

- · Maintain strong credit ratings and good investor relations
- · Maintain compliance with all relevant laws, reporting, and and disclosure requirements
- · Foster integrity in the debt management process

Further, this Policy is intended to comply with the regulatory requirements of California Government Code Section 8855 and Senate Bill 1029 which, among many things, requires debt issuers to adopt a local debt policy governing the issuance of debt and to enhance the management of government financial resources.

Scope and Authority

This Policy shall govern the issuance and management of all bonds and other forms of indebtedness of SDCP, together with any credit, liquidity, or other security instruments and agreements that may be executed in connection with the issuance of bonds and other forms of indebtedness ("bonds" or "debt"). It also considers certain financial targets which SDCP and its Board may contemplate in the future in order to continue to implement its capital investment program and to support cost-effective borrowing.

While this Policy specifically governs debt issued directly by SDCP, SDCP may consider joint arrangements with other municipal issuers or private parties to finance a project when it serves SDCP's policy objectives. SDCP is authorized to join together with other municipal agencies to create a separate entity, such as a joint powers authority, to issue debt on behalf of SDCP or the project participants. Typically, joint venture debt is repaid through revenues generated by the project, and SDCP will be liable only for its share of debt service, as specified in a contract executed in connection with the joint venture debt. If the potential for a joint venture does exist, SDCP will examine and negotiate the financial arrangements, obligations, liabilities, tax issues and other factors that may arise in the context of impacts on SDCP and its direct debt obligations using this Policy and financial best practices as guidance. SDCP will comply with state law limitations and in general, avoid joint procurement situations if SDCP lends it credit or enhances the credit of another entity, unless doing so will result in other net tangible benefits to SDCP. Further, as with all SDCP debt, any joint venture debt would be subject to evaluation and authorization of the Board.

While adherence to this Policy is generally required, it is recognized that changes in the capital markets, SDCP programs and other unforeseen circumstances may from time to time produce situations that are not covered by the Policy and will require modifications or exceptions to best achieve policy goals. In these cases, management flexibility is appropriate, provided specific authorization from the SDCP Board is obtained.

This Policy shall be reviewed at least annually as described below and presented to the SCDP Board for approval of any changes as appropriate. This Policy will remain in effect as amended or restated in the future by the Board.

Notwithstanding anything in this Policy to the contrary, the failure of SDCP to comply with any provisions of this Policy shall not affect the authorization, validity, or enforceability of any debt or other forms of indebtedness that are otherwise issued in accordance with law.

Use of Debt

To achieve its objectives, SDCP may consider debt financing for the construction, acquisition, rehabilitation, replacement, or expansion of physical assets, including real and personal property, equipment, furnishings, and improvements. Debt may also be issued for other Board-approved needs or for the refunding of prior outstanding debt.

For example, SDCP may consider the use of debt to finance ownership interest in generating or storage assets if it is determined to be a cost-effective alternative to a standard power purchase agreement or if asset ownership may afford synergies between SDCP'S other objectives (e.g., resiliency, GHG free energy, etc.) or additional measurable advantages in terms of operational efficiency.

SDCP, under the direction of the Board, will retain full flexibility in determining the best funding approach on a case-by-case basis.

Types of Debt

Types of bond issuance, further described in the Appendix, include:

- New Money: Debt may be incurred to provide for capital financing for future capital expenditures or reimbursement of prior expenditures.
- Refunding: Refunding bonds may be issued to realize debt service savings, restructure outstanding debt, modify covenants, or for other debt management purposes. Absent significant non-economic factors, refunding transactions contemplated solely for debt service savings must produce a minimum aggregate net present value debt service savings of at least 3% of the par value of the refunded bonds, calculated using the refunding issue's true interest cost ("TIC") as the discount rate. SDCP will work with its Municipal Advisor ("MA") to assess potential refunding opportunities.

Bonds may be issued as taxable or federally tax-exempt:

- Tax-Exempt: Interest received by bondholders of SDCP's bonds issued on a federally tax- exempt basis is exempt from federal income tax, and so typically may be issued at lower interest rates, reducing SDCP's cost of borrowing. Additional interest rate advantages may be available for bank qualified bonds (where SDCP will issue less than \$10 million of tax-exempt bonds in a year). However, SDCP is limited by federal tax law in the uses of tax-exempt bond proceeds and must comply with additional federal tax law requirements during the full term of any bond issue. Uses of proceeds typically require a governmental purpose and must be spent on capital improvements rather than operating expenses. Tax implications include having reasonable expectations for spending proceeds at the time of issuance, limiting private use of financed projects, and complying with arbitrage restrictions on the bond proceeds.
- Taxable: Taxable debt's interest is not exempt from federal income tax, and so is typically issued at higher interest rates than tax-exempt debt. However, the IRS restrictions described above do not apply, and so SDCP may wish to use taxable debt in situations where the project or purpose of borrowing may not meet federal tax law requirements. SDCP may also consider taxable tax credit or direct subsidy bonds, such as Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, etc., that offer lower costs of borrowing to SDCP through the issuance of taxable debt that is supported by federal subsidy payments on the interest expense to SDCP.

Method of Sale

SDCP may choose to issue bonds using either a competitive or negotiated sale process. SDCP may also sell bonds by means of a private placement or direct sale with a financial institution or other accredited investor when this method is expected to result in cost savings or provide other advantages compared to a traditional public offering. SDCP staff will work with its Municipal Advisor to determine the most appropriate method of sale for each issuance. Please see the Appendix for a detailed description of the different methods of sale that SDCP may consider.

Structure and Term

The repayment schedule of a bond issue can vary greatly from one sale to another. The same is true for other debt instruments. SDCP will consider which structures meet SDCP's strategic goals, are cost effective, minimize the new debt's impact on SDCP's overall debt service schedule, future debt capacity, and other factors when deciding how to structure new debt. In addition to debt amortization terms, structuring options may include the addition and procurement of credit enhancement, the establishment of reserves, the use of capitalized interest, and call or redemption options.

In structuring debt service, SDCP shall consider (1) current and forecasted revenues and any anticipated changes to rates, charges and operating expenses, (2) future borrowing plans, (3) meeting the Credit Considerations described in the next section, and (4) feedback from the Municipal Advisor and rating agencies on a structure's potential impacts to SDCP's credit worthiness. Generally, but not a requirement under this Policy, SDCP prefers level debt service over time. SDCP, consistent with tax law, will not structure debt with a maturity date that materially exceeds the average useful life of the assets or improvements being financed.

Green Bonds

To the extent possible, SDCP bond issuances shall be green bonds. A green bond is a type of fixed-income instrument that is specifically earmarked to raise money for climate and environmental projects. These bonds are typically asset linked and backed by the issuing entity's balance sheet, so they usually carry the same credit rating as their issuers' other debt obligations.

Credit Considerations

When SDCP issues debt, the Agency will have to execute certain bond documentation and agreements (herein generally referred to as 'indentures') that will bind SDCP to specific terms or requirements. Generally speaking, SDCP will agree to abide by certain covenants written in the indenture which describes in detail the obligations and responsibilities of SDCP and the rights of the bondholders which are designed to protect bondholders by setting standards by which SDCP agrees to comply. These types of covenants may require SDCP to meet certain requirements or, conversely, may forbid SDCP from undertaking certain activities that would jeopardize SDCP's ability to repay its debt. An indenture defines SDCP's contractual obligations and determines the parameters of SDCP's permissible financial behavior.

The incorporation of effective bond covenants into SDCP's future bond issues and respective documentation signal a commitment to abide by stated financial and operating parameters over the long-term and contribute towards SDCP's ability to maintain strong financial health. Credit ratings are ultimately statements about the likelihood of full and timely debt repayment. Because bond covenants govern an issuer's ongoing financial behavior, the analysis of bond/ indenture covenants and their impact on the risk profile of a bond is an integral part of the credit rating process.

Credit ratings are fundamentally forward-looking opinions on the relative default risk associated with a particular issuer and its debt obligations. Credit ratings have a significant impact on the interest rates for SDCP debt, and therefore SDCP will work to address the cost and benefits of obtaining and maintaining strong credit ratings. Depending on the lien structure of the debt, some, or all, of the following factors may be included in its bond documentation in order to obtain and maintain strong credit ratings that would broaden the appeal of and lower the cost of debt issued by SDCP.

- Debt Service Coverage Ratio: The ability of an agency to pay debt service (i.e. principal and interest on debt obligations) when due is often measured by how much cash flow is available, after payment of operating expenses, to cover debt service payments (Debt Service Coverage Ratio). Debt Service Coverage Ratio is a common financial metric used in the utility industry and is used by the rating agencies and investors to determine the ability of a utility to fulfill its debt obligations and ensure that the utility generates sufficient revenues to make its debt secure. SDCP's future indentures will likely require cash flow in excess of debt service, or a Debt Service Coverage Ratio greater than 1.0x. Many public agencies target a Debt Service Coverage Ratio in its financial and debt policies higher than the minimum required by its indenture to improve debt ratings and lower their costs of borrowing. Should SDCP establish a minimum Debt Service Coverage Ratio in its future indentures, the Board may consider establishing a target ratio in this Policy that is higher than the legal minimum. Note, that a failure by SDCP to meet a target ratio proposed in this Policy will not result in a default under the indenture so long as the minimum Debt Service Coverage Ratio is achieved.
- Rate Covenant: A rate covenant is a promise to set rates or fees at levels that are set to recover sufficient revenues at a designated threshold level to cover operating expenses and debt service payments. This designated threshold level is the same as the Debt Service Coverage Ratio discussed previously. SDCP may develop one or more rate covenants in order to measure and govern operating performance. As noted, future indentures may establish minimum levels of coverage and SDCP's Board-adopted financial policies may establish internal goals that exceed these minimum coverage requirements.

• Additional Bonds Test: If SDCP were to issue bonds or other debt obligations, the indentures governing those obligations may have covenants that stipulate whether SDCP may sell additional bonds in the future that share that same pledged revenue stream as security. SDCP may develop conditions or standards in its indentures that describe the parameters whereby SDCP could issue additional bonds (referred to as an "additional bonds test"). This test is intended to ensure that future bond issuance does not reduce bondholder security by placing too high a burden on the revenue stream. The additional bonds test may require that SDCP demonstrate that it has sufficient revenues to meet or exceed the designated Debt Service Coverage Ratio before additional bonds can be issued.

While the specific formulation of the Additional Bonds Test may vary depending on the type of bonds being contemplated, the SDCP will utilize an Additional Bonds which establishes a limitation on new issuances such that the pledged revenues are no less than one and a half times (1.5x) the maximum annual principal and interest and debt service for the aggregate outstanding senior lien bonds including the debt service for the new issuance.

The Agency will also seek to maintain aggregate annual debt service on long-term debt at a level notto-exceed 5% of the Agency's annual total operating expenses. The actual terms and conditions specific to each debt issue will be controlled by the applicable documents.

- Reserves: SDCP may maintain reserves including those in compliance with GASB 62 such as the adopted Operating Reserve Fund to act as a rate stabilization fund that can help mitigate the impacts of revenue variability. Depending on whether or not SDCP incorporates a rate stabilization fund reserve into its indentures, this reserve may be used to help meet Debt Service Coverage Ratio requirements during times of revenue shortfalls. This fund can be a valuable tool to manage and mitigate the risk related to any Debt Service Coverage Ratio requirements included in future indentures and to address revenue and rate volatility. There are other reserves that the Board may consider adopting in the future that, for example, may be utilized for paying debt service, for funding specific capital projects, or for emergency purposes etc.
- · Additional Ratio Targets: In the future the Board will continue to monitor this Policy and will establish enhancements to further strengthen the financial

ratios and targets of SDCP. For example, while not a ratio included in Indenture covenants, another ratio that can help measure SDCP's financial health and position is the ratio of debt-funded capital to overall capital spending (i.e., debt to pay-go spending). Prudent use of debt financing rather than paygo funding of capital projects can facilitate better allocation of resources over time and ensure payment equity across generations for the use of long-term assets.

Financing Team and Professional Services

SDCP will assemble a financing team that will provide advice and support for the development and implementation of debt issuance as well as ongoing analysis and support. The financing team will include both SDCP staff and outside professional consultants. When required by SDCP's procurement policy, SDCP will use a competitive process through a Request for Proposal ("RFP") in the retention of professional consultants. Otherwise, SDCP will adhere to its best practices in contracting to procure such vendors. The professional consultants selected by SDCP could be engaged to help develop a credit strategy, issue debt and/or assist SDCP with its compliance with applicable federal and state statutes, and Internal Revenue Code at the time of issuance as well as on a continuing basis. Please see the Appendix for a detailed description of the outside professional consultants SDCP may include on its financing team.

Debt Administration

The Chief Executive Officer ("CEO"), or designee shall make recommendations on budget, stabilization transfers and rate adjustments. The Chief Financial Officer shall be responsible for the administration and implementation of this Policy and will have day-to-day responsibility for structuring, implementing and managing SDCP's debt program.

Internal Control Procedures

When issuing debt, in addition to complying with the terms of this Policy, SDCP shall comply with any other applicable policies regarding initial bond disclosure, continuing disclosure, post- issuance compliance, and investment of bond proceeds. Please see the Appendix for a detailed description of SDCP's internal control procedures.

Post-Issuance Administration

SDCP will comply with requirements pertaining to initial bond disclosure, continuing disclosure, tax-exemption, postissuance compliance, and investment of bond proceeds. This includes any continuing disclosure undertakings under Securities and Exchange Commission ("SEC") Rule 15c2-12; tax covenants and related federal tax compliance requirements such as arbitrage restrictions and rebate requirements; and all California State reporting requirements.

Please see the Appendix for a detailed description of SDCP's Post-Issuance Compliance Policy and additional information on SDCP's post-compliance procedures.

Training

The Chief Financial Officer shall provide training the members of SDCP staff involved in the tax compliance and the initial or continuing disclosure process in coordination with the CEO, and the SDCP Board regarding their respective responsibilities for disclosure and tax compliance.

The Chief Financial Officer, or designee, shall arrange for periodic disclosure and tax training sessions conducted by SDCP's disclosure counsel or other professionals (e.g., seminars) which shall include education regarding disclosure policies, SDCP's disclosure obligations under applicable federal and state securities and tax laws, and the tax compliance and disclosure responsibilities of SDCP.

Policy Review

In coordination with the CEO, the Chief Financial Officer, or designee, will be responsible for regularly reviewing and updating this Policy, and shall present any recommended revisions to the Board for consideration and adoption.

APPENDIX

Permitted Types of Debt

SDCP may legally issue both short-term and long-term debt, through either a direct loan or through the public market, using the debt instruments described below. SDCP in consultation with its internal Counsel, Bond Counsel and Municipal Advisors, shall determine the most appropriate instrument for a proposed debt offering.

SDCP may issue the following types of tax-exempt or taxable Debt:

• Long-Term Debt: Long-term debt generally includes debt issued to finance capital expenditures with the objective of structuring repayment within the expected life of the financed asset. Debt may be used as a tool for rate stabilization as repayment of the debt is spread over the useful life of the financed project. Long-term bonds may bear interest at fixed or variable rates or structured with level debt service payments or otherwise with term maturities. Long-term revenue bonds are a type of debt that may be entered into by SDCP and which may be secured by a lien on the revenues of SDCP. SDCP may also enter into longterm loans with state or federal agencies. These loans typically have fixed interest rates. Government loan programs may offer favorable interest rates and terms, and should be considered as alternatives to market rate debt when available. The use of longterm debt will be evaluated with pay-as-you-go capital investment and would not be expected (absent extraordinary circumstances) to fund non-capital operational expenditures or operating deficits.

- Short-Term Debt: Short-term debt generally has a maturity of less than 7 years and may take several forms, including notes, commercial paper, direct bank loans and other short-term products with either fixed or variable rates. Short-term debt products are flexible cash management tools that are primarily used to meet interim funding (pending the issuance of longterm debt). When approving short-term debt products, the Board may limit SDCP's percentage of short-term debt when compared to its long-term debt portfolio taking into account future market access, term-out provisions and retail rate stability.
- · Variable-Rate Debt: In addition to interim financing, which includes commercial paper and similar shortterm borrowing programs, it may be appropriate to issue long-term variable rate debt that bears an interest rate that is reset periodically at predetermined intervals, including entering into revolving credit facilities, to diversify the debt portfolio, to reduce interest costs, and to improve the match of variable rate assets (such as short-term investments and reserves) to liabilities. The amount of variable rate debt will generally not exceed a net 20% after consideration of investments and cash equivalents of the outstanding debt portfolio of SDCP.

SDCP may consider the following types of fixed or variable rate debt:

- · Revenue Bonds secured by general revenue or project revenues
- Commercial Paper or other Interim Funding Notes
- Capital Leases
- · Certificates of Participation/Lease Revenue Bonds
- Installment Sale or Purchase Agreements Revenue Bonds
- Bond or Grant Anticipation Notes
- Tax and Revenue Anticipation Notes
- State and Federal Loans and Grants
- Direct Bank Loans or Lines of Credit
- Public Private Partnerships

This list is not meant to be inclusive of all options that may be available to SDCP as different circumstances may dictate. SDCP may from time to time find that other types of debt would be beneficial to further its purposes and may approve such debt without an amendment to this Policy.

Method of Sale

SDCP may choose to issue bonds using either a competitive or negotiated sale process. SDCP may also sell bonds by means of a private placement or direct sale with a financial institution or other accredited investor when this method is demonstrated to result in cost savings or provide other advantages relative to a traditional public offering. SDCP staff will work with its Municipal Advisor to determine the most appropriate method of sale for each issuance.

- Competitive Sale: SDCP may elect to sell bonds in the public market on a competitive basis depending on market conditions, required size of issuance and relative complexity of structure. The Bonds are marketed to a wide audience of investment banking (underwriting) firms. The underwriter is selected based on its bid for the securities. SDCP will award the sale of the competitively sold bonds on the basis of the lowest true interest cost basis. Pursuant to this policy, The Chief Financial Officer, or designee, is authorized to sign the bid form on behalf of the SDCP fixing the interest rates on bonds sold on a competitive basis.
- Negotiated Sale: SDCP may elect to sell bonds in the public market on a negotiated basis depending on market conditions, required size of issuance and relative complexity of structure. SDCP staff selects the underwriter, or team of underwriters, of its securities in advance of the bond sale on the basis of responses to a proposal review. With the assistance of the Municipal Advisor (MA), SDCP staff works with the underwriter to bring the issue to market and negotiates all rates

- and terms of the sale. In advance of the sale, SDCP staff will determine compensation for and liability of each underwriter employed and the designation rules and priority of orders under which the sale itself will be conducted. Pursuant to this policy, the Chief Financial Officer or designee will be authorized to sign the bond purchase agreement on behalf of SDCP, fixing the interest rates on bonds sold on a negotiated basis.
- Private placement: SDCP may elect to issue debt on a private placement basis. Such method shall be considered if it is demonstrated to result in cost savings or provide other advantages relative to other methods of debt issuance, or if it is determined that access to the public market is unavailable and/or timing considerations require that a financing be completed more quickly than required for a competitive or negotiated sale.

Financing Team and Professional Services

SDCP will assemble a financing team that will provide advice and support for the best execution of each debt transaction. The financing team may consist of multiple parties with distinct responsibilities and is generally comprised of both SDCP staff and outside professional consultants. These outside professional consultants may include:

- Municipal Advisors: SDCP shall utilize the services of independent MAs in connection with debt-related issuances or projects. SDCP's MA will not serve as an underwriter on negotiated bond sales of SDCP.
- Underwriters: SDCP will utilize an underwriter in the sale of bonds on a competitive or negotiated basis. An underwriter is a financial services firm that acquires (by purchase) bonds for resale in the public bond markets. For a negotiated sale, SDCP will select an underwriter through a request for proposal process; basing the selection on value for SDCP including capital structure, underwriting capabilities, demonstrated expertise and experience as well as proposed fees. SDCP may also select an underwriting firm to act as placement agent in connection with a private placement of bonds. In a competitive sale, bonds are offered for sale at a designated date and time, and multiple underwriters may submit bids. The bonds are awarded to the underwriter (or group of underwriters) that submit the lowest bid.
- Disclosure Counsel: SDCP will endeavor to provide complete and appropriate disclosure of financial and legal condition in the issuance of debt. SDCP will also take steps and adopt policies in order to provide for compliance with continuing disclosure requirements.

Disclosure counsel, which may be Bond Counsel, shall be responsible for assisting SDCP in the preparation of the Preliminary and Final Official Statements and any other disclosure documents. SDCP will select, through a request for proposal process, and retain qualified and experienced counsel in achieving this objective of appropriate disclosure.

- Bond Counsel: SDCP will retain qualified and experienced legal counsel as representation of SDCP to provide the customary opinions required for the issuance of bonds and other financial obligations. Bond counsel shall be responsible for developing the legal documents required for each transaction and draft and review documentation sufficient to provide approving legal opinions. Bond counsel will render customary approving legal and tax opinions for each transaction.
- Bond Counsel: SDCP may select through a request for proposal process the services of a financial institution, acting through its trust division, to act as trustee. The trustee may hold, invest and disburse financing proceeds as directed by SDCP. The trustee will act as registrar as well as the paying agent for SDCP debt. The Chief Financial Officer or designee shall monitor the services rendered by the trustee.

Internal Control Procedures

All debt transactions must be approved by the Board of Directors. The proceeds of bond sales will be invested until used for the intended project(s) in order to maximize utilization of the public funds. The investments will be made consistent with the following guidelines: (1) compliance with federal tax arbitrage requirements, as applicable; (2) safety of principal; (3) liquidity; (4) diversity; and (5) return on investment or yield, and may be held as cash. SDCP's Investment Policy guidelines and bond indentures will govern objectives and criteria for investment of bond proceeds. The Treasurer will oversee the investment of bond proceeds consistent with the foregoing guidelines.

Proceeds of debt will be held either by a third-party trustee or by SDCP. The trustee will disburse bond proceeds to SDCP upon submission of one or more written requisitions signed by an authorized SDCP officer. If the funds are held directly by SDCP, they must be held and accounted for in a separate fund or account, the expenditure of which will be documented by SDCP and subject to established internal controls consistent with SDCP's applicable policies and procedures. These procedures will include, in connection with each requisition or expenditure of proceeds held by SDCP, a written record of the particular capital project or

program or other expense to which the funds drawn were applied or allocated.

For bond proceeds that are meant to reimburse SDCP for previous expenditures, SDCP staff will provide documentation that conform to tax requirements and other applicable regulations. To support this certification, staff will analyze capital expenditures and establish that requirements are met before the bond issuance takes place and maintain a written record of such analysis and the amount reimbursed to each particular capital project or program or other expense to which such reimbursed proceeds are to be allocated.

For bond proceeds intended to provide funding for ongoing or upcoming capital expenditures, SDCP staff will monitor the expenditure process. Staff will analyze the use of proceeds on an annual basis or more frequently, if deemed appropriate, until the proceeds are completely spent and will perform monitoring and record-keeping in accordance with SDCP's accounting guidelines and other applicable regulatory requirements. Refunding bond proceeds are generally held by a third-party trustee or fiscal agent to be applied in connection with written directions generally prepared by bond counsel. SDCP will maintain records of the directions to the trustee, and will review of fund statements and other records received from, the trustee.

Post-Issuance Administration

SDCP will comply with requirements pertaining to initial bond disclosure, continuing disclosure, tax-exemption, postissuance compliance, and investment of bond proceeds. This includes any continuing disclosure undertakings under SEC Rule 15c2-12; tax covenants and related federal tax compliance requirements such as arbitrage restrictions and rebate requirements; and all California State reporting requirements.

- Post-Issuance Compliance Policy: SDCP will adopt a Post-Issuance Compliance Policy ("PICP") to provide for ongoing monitoring and reporting with respect to compliance with SEC requirements for publicly offered indebtedness and with tax regulations applicable to tax-exempt debt. The PICP will provide for the federal disclosure requirements, responsibility for reporting, training, and describe procedures for compliance with continuing disclosure agreements entered into for each such series of bonds from the date they are issued until the bonds are no longer outstanding. The PICP may be administratively adopted and amended without approval of the Board.
- Financial Disclosure: SDCP will comply with applicable deliverable obligations and financial disclosure

requirements, as specified in any and all bond and debt-related documents. Staff has developed and will maintain an updated schedule of the requirements in compliance with SDCP's internal record-keeping processes. SDCP will post required documents to the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA") website as required on a timely basis. SDCP, at its discretion, may also post documents voluntarily to EMMA. SDCP will provide financial disclosure to rating agencies, institutional and individual investors, other levels of government, and the general public to share clear, comprehensible, financial information using the appropriate channels/policies/procedures. The Chief Financial Officer is responsible for monitoring the compliance by SDCP of applicable disclosure requirements. SDCP also may contract with an outside service provider to monitor disclosure postings.

- Tax Compliance: SDCP will comply with applicable federal arbitrage and rebate regulations related to its bonds and other debt instruments. These responsibilities include monitoring the investment and expenditure of bond proceeds, maintaining a system of record-keeping and reporting and contracting for the services of outside arbitrage consultants as necessary. SDCP will establish and implement postissuance procedures to guide its compliance with these requirements. The Chief Financial Officer is responsible for monitoring the compliance by SDCP of applicable tax requirements for debt issued on a tax-exempt basis.
- Record Keeping: A copy of all debt-related records shall be retained at SDCP's offices or otherwise electronically. At a minimum, these records shall include all official statements, bid documents, bond documents/transcripts, indentures, resolutions, trustee statements, leases, and title reports for each financing (to the extent available). The following documents shall be maintained for the term of each issue of bonds (including refunding bonds) plus at least three years:
 - A copy of the bond closing transcript(s) and other relevant documentation delivered to SDCP at or in connection with closing of the issue of bonds;
 - A copy of material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for bond proceeds and evidence as to

- the amount and date for each draw down of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds;
- A copy of all contracts and arrangements involving the use of bond-financed or refinanced assets: and
- A copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements, in connection with any investment agreements, and copies of all bidding documents, if any.

Investment Policy

Subject

Investment Policy

Policy Guidelines

The San Diego Community Power ("SDCP") Investment Policy ("Policy") establishes investment guidelines for protecting SDCP's cash reserves, deposits, and investments ("Funds") while producing a reasonable rate of return on investments.

The Policy articulates: (1) the objectives and priorities for SDCP investments; (2) the types of investments that are permitted and prohibited; and (3) the controls SDCP will implement to ensure assets are protected. This Policy is adopted pursuant to California Government Code Section ("Section") 53600-53608 and must be adopted or amended by resolution. The SDCP Board of Directors ("Board") is not required to adopt a formal Investment Policy by statute, however, it is in the best practice to ensure agency assets are protected.

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 4.5.5 of the IPA states that one of the general purposes of the Board is to set policy.

Section 5.10.2(C) of the JPA finally states one of the primary purposes of the Financial and Risk Management Committee (FRMC) is to review and recommend to the Board financial policies and procedures to ensure equitable contributions by Parties consistent with a recommendation for Board approval of the Investment Policy herein. Further, this section states the FRMC may have such other responsibilities as may be approved by the Board, including but not limited to advising the Chief Executive Officer on fiscal and risk management policies and procedures, rules and regulations governing investment of surplus funds, audits to achieve best practices in corporate governance and selection and designation of financial institutions for deposit of SDCP funds, and credit/depository matters.

Investment Objectives

To the extent possible, investments will align with SDCP's mission, vision, value, and goals. When managing Funds, SDCP's primary objectives shall be to (1) safeguard the principal of the Funds, (2) meet the liquidity needs of SDCP, (3) achieve a return on funds invested, and (4) exercise a high standard of care on Funds within SDCP's control.

- 1. Safety: Safety of principal is the foremost objective of cash and investment management activities. The investment of Funds shall be undertaken in a manner that seeks to ensure the preservation of principal.
- 2. Liquidity: The Funds of SDCP shall remain sufficiently liquid to meet all operating needs that may be reasonably anticipated. Since all possible cash demands cannot be anticipated, the investment of Funds in deposits or instruments that are available on demand is recommended.
- 3. Return on Investments: SDCP's deposit and investment portfolio shall be designed with the objective of attaining a market rate of return throughout the economic cycle while considering investment risk and liquidity constraints. The return on deposits and investments is of secondary importance compared to the safety and liquidity objectives described in Investment Objectives, Section A and Investment Objectives, Section B, above.
- 4. Standard of Care: SDCP will manage Funds in accordance with the "Prudent Investor Standard" pursuant to California Government Code Section 53600.32 as follows:

"All governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling or managing public funds, a trustee shall act with care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."

² All further statutory references are to the California Government Code unless otherwise stated.

Delegation of Authority

Pursuant to Section 53607, the Board has the authority to delegate the responsibility to manage SDCP's funds to the Treasurer. The Treasurer has authority to appoint Deputy Treasurer(s) as the Treasurer deems necessary to carry the duties in accordance with the Investment Policy. SDCP may engage the services from one or more external investment advisers, who are registered under the Investment Advisers Act of 1940, to assist in the management of SDCP's investment portfolio in a manner consistent with the SDCP's Policy. External investment advisers may be granted discretion to purchase and sell investment securities in accordance with the investment objective set forth in this Policy.

Scope

This Investment Policy applies to all funds and investment under the direct authority of SDCP. This Policy does not apply to the investment of bond proceeds, which would be governed by any applicable bond documents and any other funds specifically exempted by SDCP's Board of Directors.

Acceptable Investment Types: To the extent possible, investments will align with SDCP's mission, vision, value, and goals.

- 1. Deposits at Bank(s): Funds may be invested in noninterest-bearing depository accounts to meet SDCP's operating and collateral needs and grant requirements. Funds not needed for these purposes may be invested in interest-bearing depository accounts or Federal Deposit Insurance Corporation (FDIC) insured certificates of deposit with maturities not to exceed five (5) years. Banks eligible to receive deposits will be federally or state chartered and will conform to Section 53635.2 which requires that banks "have received an overall rating of not less than 'satisfactory' in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code." As per Section 53652, banks must collateralize the deposits of public agencies in an amount equal to no less than 110% of as currently stated in the value of the deposits. The Treasurer will monitor the credit quality of eligible banks holding SDCP deposits that exceed FDIC insurance limits to ensure the safety of SDCP deposits.
- 2. Local Agency Investment Fund (LAIF): Funds may be invested in the Local Agency Investment Fund established by the California State Treasurer for the benefit of local agencies. LAIF's investments in

- instruments prohibited by or not specified in SDCP's policy do not exclude the investment in LAIF itself from SDCP list of allowable investments, provided LAIF's reports allow the Treasurer to adequately judge the risk inherent in LAIF's portfolio.
- 3. U.S. Treasury Obligations: Funds may be invested in United States Treasury obligations with a term to maturity not exceeding five (5) years and subject to the limitations set forth in Sections 53601 et seq. and 53635 et seq.
- 4. Federal Agency Securities: Funds may be invested in Federal Agency Securities or Government-Sponsored Enterprise (GSE) obligations with a term to maturity not exceeding five (5) years and subject to the limitations set forth in Sections 53601 et seq. and 53635 et seq. No more than 20% of the total portfolio may be invested in callable agency securities and no more than 30% of the total portfolio may be invested in any single Agency/ GSE issuer.
- 5. Bankers' Acceptances: Funds may be invested in Banker's Acceptances provided that they are issued by institutions which have short-term debt obligations rated "A-1" or its equivalent of better by at least one Nationally Recognized Statistical Rating Organization (NRSRO). Not more than 40% of the portfolio may be invested in Bankers' Acceptances, and no more than 5% of the portfolio may be invested in any single issuer. The maximum maturity shall not exceed 180 days.
- **6.** Negotiable Certificates of Deposit: Funds may be invested in negotiable certificates of deposit in accordance with the requirements of Section 53601 and 53601.8, and subject to the following limitations:
 - a. Issued by an entity as defined in Section 53601(i);
 - b. No more than 30% of the total portfolio shall be invested in certificates of deposit, no more than 5% of the total portfolio may be invested in any single issuer, and the maximum maturity does not exceed 5 years.
- 7. Placement Service Deposits: Funds may be invested in deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States (Section 53601.8). The full amount of principal and the interest that may be accrued during the maximum term of each deposit shall at all times be insured by federal deposit insurance. The maximum portfolio exposure to the deposits placed pursuant to this section shall be limited by Section 53601.8.

- **8.** Money Market Funds: Funds may be invested in money market funds pursuant to Section 53601(l)(2) and subject to Section 53601(l)(4). No more than 20% of the portfolio may be invested in the shares of any one Money Market Fund. No more than 20% of the total portfolio may be invested in these securities.
- 9. Commercial Paper: Of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a NRSRO. The entity that issues the commercial paper must meet all of the following conditions in either paragraph A or paragraph B:
 - a. The entity meets the following criteria: (i) is organized and operating in the United States as a general corporation, (ii) has total assets in excess of five hundred million dollars (\$500.000,000). and (iii) has debt other than commercial paper, if any, that is rated in a rating category of "A" or its equivalent or higher by an NRSRO.
 - b. The entity meets the following criteria: (i) is organized within the United States as a special purpose corporation, trust, or limited liability company, (ii) has program-wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond, and (iii) has commercial paper that is rated "A-1" or higher, or the equivalent, by an NRSRO.
 - · No more than 10% of the outstanding commercial paper of any single issuer.
 - · No more than 25% of SDCP's investment assets under management may be invested in Commercial Paper. Under a provision sunsetting on January 1, 2026, no more than 40% of the total portfolio may be invested in Commercial Paper if SDCP's investment assets under management are greater than \$100,000,000.
 - No more than 5% of the total portfolio may be invested in any single issuer. The maximum maturity does not exceed 270 days.
- **10.** Medium Term Notes (MTN): The issuer is a corporation organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. (Section 53601 et seq). The securities are rated in a rating category of "A" or its equivalent or better by at least one NRSRO. No more than 30% of the total portfolio may be invested in MTNs, no more than 5% of the total

- portfolio may be invested in any single issuer and the maximum maturity does not exceed five (5) years.
- 11. Pass-Through Securities: Asset-Backed, Mortgage-Backed, Mortgage Pass-Through Securities, and Collateralized Mortgage Obligations (Section 53601 et seq) from issuers not defined in sections 3 and 4 of the Acceptable Investment Types section of this policy, provided that: The securities are rated in a rating category of "AA" or its equivalent or better by a NRSRO, no more than 20% of the total portfolio may be invested in these securities, no more than 5% of the total portfolio may be invested in any single Asset-Backed or Commercial Mortgage security issuer and the maximum maturity does not exceed five (5) years.
- **12.** Municipal Securities: include obligations of SDCP, the State of California and any local agency within the State of California, (Section 53601) provided that: The securities are rated in a rating category of "A" or its equivalent or better by at least one nationally recognized statistical rating organization ("NRSRO")., no more than 5% of the total portfolio may be invested in any single issuer, no more than 30% of the total portfolio may be in Municipal Securities and the maximum maturity does not exceed five (5) years.
- 13. Municipal Securities: (Registered treasury notes or bonds) of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California (Section 53601). The securities are rated in a rating category of "A" or its equivalent or better by at least one NRSRO, no more than 5% of the total portfolio may be invested in any single issuer, no more than 30% of the total portfolio may be in Municipal Securities and the maximum maturity does not exceed five (5) years.
- 14. Supranationals: Issues are U.S. dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank. (Section 53601). The securities are rated in a rating category of "AA" or its equivalent or better by a NRSRO, no more than 30% of the total portfolio may be invested in these securities, no more than 10% of the total portfolio may be invested in any single issue and the maximum maturity does not exceed five (5) years.

Prohibited Investment Types

Pursuant to Section 53601.6, SDCP shall not invest Funds in any security that could result in a zero-interest accrual, or less, if held to maturity. These prohibited investments include, but are not limited to, inverse floaters, range notes, or mortgage-derived interest-only strips. The purchase of foreign currency denominated securities is prohibited. The purchase of Crypto Asset Securities is prohibited. The purchase of a security with a forward settlement date exceeding 45 days from the time of the investment is prohibited. Trading securities for the sole purpose of speculating on the future direction of interest rates is prohibited. Purchasing or selling securities on margin is prohibited. The use of reverse repurchase agreements, securities lending or any other form of borrowing or leverage is prohibited. SDCP is prohibited from investing in any company or organization whose business do not align with SDCP's mission, vision, value and goals.

Investment Portfolio Management

The term to maturity of any Funds invested shall not exceed five (5) years pursuant to Section 53601. The Treasurer will allocate Funds among authorized investments consistent with the objectives and standards of care outlined in this Policy.

Collateralization

Certificates of Deposit (CDs). SDCP shall require any commercial bank or savings and loan association to deposit eligible securities with an agency of a depository approved by the State Banking Department to secure any uninsured portion of a Non-Negotiable Certificate of Deposit. The value of eligible securities as defined pursuant to California Government Code, Section 53651, pledged against a Certificate of Deposit shall be equal to 150% of the face value of the CD if the securities are classified as mortgages and 110% of the face value of the CD for all other classes of security.

Bank Deposits. This is the process by which a bank or financial institution pledges securities, or other deposits for the purpose of securing repayment of deposited funds. SDCP shall require any bank or financial institution to comply with the collateralization criteria defined in California Government Code, Section 53651.

Risk Management and Diversification

SDCP's investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks associated with concentrating investments in specific security types, maturity segment, or in individual financial institutions. No more than 5% of the investment portfolio shall be in

securities of any one issuer except for U.S. Treasuries, U.S. Government Agency issues, Supranationals and investment pools such as LAIF, and money market funds.

- a. Credit Risk: Credit risk, defined as the risk of loss due to failure of the insurer of a security, shall be mitigated by investing in those securities with an "A" or above rating and approved in the Investment Policy and by diversifying the investment portfolio so that the failure of any one issuer would not unduly harm SDCP's cash flow.
- b. Market Risk: Market risk or interest rate risk, defined as the risk of market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by implementing a short term and long-term investment strategies. It is explicitly recognized herein, however, that in a diversified portfolio, occasional measured losses are inevitable and must be considered within the context of overall investment return.

The duration of the portfolio will generally be approximately equal to the duration (typically, plus or minus 20%) of a Market Benchmark, an index selected by SDCP based on SDCP's investment objectives, constraints and risk tolerances.

Credit Rating

This Investment Policy sets forth minimum credit ratings for each type of security. These credit ratings apply to the initial purchase of a security and do not automatically force the sale of a security if the credit ratings of the security fall below the policy limits.

Minimum credit ratings:

- a. For securities with maturities of 13 months or less, the rating must be in the highest short-term rating category (without regard to qualification of such rating symbol such as "+" or "- ") by at least one nationally recognized statistical rating organization (the "NRSRO").
- b. For securities with maturities greater than 13 months, the rating must be "A" or higher by at least one NRSRO.

The monitoring of credit ratings consists of the following procedures:

- 1. When a credit rating downgrade occurs which results in a rating below the minimum credit requirement, SDCP's Finance Department or external investment adviser will analyze and evaluate the credit rating to determine whether to hold or sell the investment.
- 2. In the event a security in the Fund receives a credit rating downgrade which results in a rating below the minimum credit rating requirement, SDCP's Treasurer will report the rating change to the Finance and Risk Management Committee in the monthly public report. In the same manner, the Finance and Risk Management Committee will be informed on the decision to hold or sell a downgraded security.
- 3. The Investment Officials or authorized employees involved in the investment process and external investment advisers shall meet at least quarterly to review and update the approved list of securities and establish credit criteria for each category of security.

To ensure that the Fund maintains the highest overall credit rating with the contracted NRSRO, the asset allocation and portfolio holdings will be provided to the contracted NRSRO on a monthly basis.

Brokers

The Treasurer shall endeavor to complete investment transactions in accordance with Section 53601.5, institutions eligible to transact investment business with SDCP include:

- a. Institutions licensed by the state as a brokerdealer.
- b. Institutions that are members of a federally regulated securities exchange.
- c. Primary government dealers as designated by the Federal Reserve Bank and non-primary government dealers.
- d. Nationally or state-chartered banks.
- e. The Federal Reserve Bank.
- f. Direct issuers of securities eligible for purchase.

Broker/dealers shall be approved by the Chief Executive Officer upon recommendation by the Treasurer. Selection of broker/dealers shall be based upon the following criteria: the reputation and financial strength of the company or financial institution, the reputation and expertise of the individuals employed, and pursuant to the requirements of Section 53601.5. The Treasurer shall require any selected

broker, brokerage firm, dealer, or securities firm to affirm that it has not, within any 48-consecutive month period, made a political contribution to any member of the SDCP Board, or any candidate who may join the SDCP Board in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board, the Political Reform Act, including section 84308, or any applicable SDCP Policy, as amended from time to time. The selected broker or dealers shall be provided with and acknowledge receipt of this Policy.

Losses

Losses are acceptable on a sale before maturity and may be taken if required to meet the liquidity needs of SDCP or if the reinvestment proceeds will earn an income flow with a present value higher than the present value of the income flow that would have been generated by the original investment, considering any investment loss or foregoing interest on the original investment.

Delivery and Safekeeping

The delivery and safekeeping of all securities shall be made through a third-party custodian when practical and cost effective as determined by the Treasurer, or a duly appointed Deputy Treasurer, and in accordance with Section 53608.

The Treasurer shall review all transaction confirmations for conformity with the original transaction and monitor for excessive trading.

Ethics and Conflict of Interest

The Investment Officials or authorized employees involved in the investment process, shall act as custodians of the public trust and will refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. Investment Officials and any external investment advisers acknowledge that all direct SDCP investments are subject to public review and evaluation.

SDCP Investment Officials involved in the investment process shall refrain from personal business activity that could create a conflict of interest or the appearance of a conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

SDCP Investment Officials shall disclose to General Counsel or designee i) any material interests in financial institutions with which they conduct business, and ii) disclose any personal investments with a direct, indirect or beneficial interest totaling \$2,000 or more. Investment Officials

shall refrain from undertaking any personal investment transactions with the same individual from the external investment adviser with whom business is conducted on behalf of SDCP.

Investment Officials, pursuant with all applicable laws, shall not accept honoraria, gifts, and gratuities from advisers, brokers, dealers, bankers, or other entity with whom SDCP conducts business.

Any external investment adviser contracted by SDCP will comply with Municipal Securities Rulemaking Board Rule G-37 and shall follow the Investment Adviser Fiduciary Standard established by the U.S. Securities and Exchange Commission.

Internal Controls

The Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met.

Accordingly, the Treasurer shall establish and maintain internal controls that shall address the following points:

- a. Control of Collusion: Collusion is a situation where two or more employees are working in conjunction to defraud their employer. To achieve a segregation of duties, individuals who authorize investment transactions shall not also record or reconcile said transactions.
- b. Clear Delegation of Authority to Subordinate Staff Members: Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
- c. Delivery-Versus-Payment (DVP): All investment transactions shall be conducted on a deliveryversus-payment basis.
- d. Safekeeping and Custody: Securities purchased from any bank or dealer, including appropriate collateral (as defined by California Government Code), that are not insured by the FDIC, shall be placed with an independent third party for custodial safekeeping. To protect against potential losses due to failure of individual securities dealers, and to enhance access to securities, interest payments and maturity

proceeds, all cash and securities in SDCP's portfolio shall be held in safekeeping in SDCP's name by a third-party custodian, acting as agent for SDCP under the terms of a custody agreement executed by the bank and SDCP. All investment transactions will require a safekeeping receipt or acknowledgment generated from the trade. A monthly report will be received by SDCP from the custodian listing all securities held in safekeeping with current market data and other information. The only exceptions to the foregoing shall be depository accounts and securities purchases made with: (1) local government investment pools; (2) time certificates of deposit, (3) Local Agency Investment Fund, and (4) mutual funds and money market mutual funds, since these securities are not deliverable.

- e. Avoidance of Physical Delivered Bearer **Securities**: Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Bearer securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with such securities.
- f. Written Confirmation of Telephone Wire Transfers: Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions should be supported by written or electronic communications and approved by the appropriate person. Development of a Wire Transfer Agreement with the Lead Bank or Third-Party.
- g. Audits: SDCP's Funds shall be subject to a process of independent review by its external auditors. SDCP's external auditors shall review the investment portfolio in connection with SDCP's annual audit for compliance with the Policy pursuant to Section 27134. The results of the audit shall be reported to the Treasurer.

Reports

- a. Monthly: The Treasurer will perform a monthly review of the investment function. Following the commencement of investment transactions, the Treasurer shall submit a monthly report of all investment transactions to the Finance and Risk Management Committee. Investment transactions are defined as the purchase, sale or exchange of securities.
- b. Annually: The Treasurer will submit an annual report to the Finance and Risk Management Committee within 60 days of the end of a fiscal year providing the following:
 - · A list of individual securities by investment type, issuer, credit risk rating, CUSIP number, settlement date of purchase, date of maturity, par value and dollar amount invested on all securities, the market value and source of the market value information:
 - · A statement that the portfolio is in compliance with this Policy and in accordance with Section 53646 or the manner in which the portfolio is not in compliance; and
 - · A statement of SDCP's ability to meet anticipated cash requirements for the upcoming 12 months.
 - The Treasurer shall monitor and evaluate the portfolio's performance relative to the chosen market benchmark(s), which will be included in the Treasurer's annual report. The Treasurer shall select an appropriate, readily available index to use as a market benchmark. Benchmarks may change over time based on changes in market conditions or cash flow requirements.
- c. Annual Review: This Policy will be reviewed annually by the Treasurer. The Board is authorized to approve changes to this Policy following the review of proposed changes by the Finance Risk Management Committee.

Glossary of Investment Terms

ASSET BACKED SECURITIES. Securities supported by pools of installment loans or leases or by pools of revolving lines of credit.

BANKERS' ACCEPTANCES. A short-term, negotiable, unconditional, and time draft drawn on and accepted by a bank. It is typically used in trade to finance the purchase and sale of goods.

BENCHMARK. A comparison security or portfolio. A performance benchmark is a partial market index, which reflects the mix of securities allowed under a specific investment policy.

BROKER. A broker brings buyers and sellers together for a transaction for which the broker receives a commission. A broker does not sell securities from his own position.

CALLABLE. A callable security gives the issuer the option to call it from the investor prior to its maturity. The main cause of a call is a decline in interest rates. If interest rates decline, the issuer will likely call its current securities and reissue them at a lower rate of interest.

CERTIFICATE OF DEPOSIT (CD). A time deposit with a specific maturity evidenced by a certificate. Large denomination CDs may be marketable.

CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY

SYSTEM (CDARS). A private placement service that allows local agencies to purchase more than \$250,000 in CDs from a single financial institution (must be a participating institution of CDARS) while still maintaining FDIC insurance coverage. CDARS is currently the only entity providing this service. CDARS facilitates the trading of deposits between the California institution and other participating institutions in amounts that are less than \$250,000 each, so that FDIC coverage is maintained.

COLLATERAL. Securities or cash pledged by a borrower to secure repayment of a loan or repurchase agreement. Also, securities pledged by a financial institution to secure deposits of public monies.

COLLATERALIZED MORTGAGE OBLIGATIONS

(CMO). Classes of bonds that redistribute the cash flows of mortgage securities (and whole loans) to create securities that have different levels of prepayment risk, as compared to the underlying mortgage securities.

COMMERCIAL PAPER. The short-term unsecured debt of corporations.

COUPON. The rate of return at which interest is paid on a bond.

CREDIT RISK. The risk that principal and/or interest on an investment will not be paid in a timely manner due to changes in the condition of the issuer.

CRYPTO ASSET. Digital assets that use public ledgers over the internet to prove ownership. They use cryptography, peerto-peer networks and a distributed ledger technology (DLT) such as blockchain – to create, verify and secure transactions.

CUSIP. Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most financial instruments, including: stocks of all registered U.S. and Canadian companies, commercial paper, and U.S. government and municipal bonds.

DEALER. A dealer acts as a principal in security transactions, selling securities from and buying securities for his own position.

DELIVERY vs PAYMENT (DVP). A securities industry procedure whereby payment for a security must be made at the time the security is delivered to the purchaser's agent.

DISCOUNT. The difference between the par value of a bond and the cost of the bond, when the cost is below par. Some short-term securities, such as T-bills and banker's acceptances, are known as discount securities. They sell at a discount from par, and return the par value to the investor at maturity without additional interest. Other securities, which have fixed coupons, trade at a discount when the coupon rate is lower than the current market rate for securities of that maturity and/or quality.

DIVERSIFICATION. Dividing investment funds among a variety of investments to avoid excessive exposure to any one source of risk.

DURATION. The weighted average time to maturity of a bond where the weights are the present values of the future cash flows. Duration measures the price sensitivity of a bond to changes in interest rates. (See modified duration).

FEDERAL FUNDS RATE. The rate of interest charged by banks for short-term loans to other banks. The Federal Reserve Bank through open-market operations establishes it. **ISSUER.** The entity identified as the counterparty or obligator related to a security trade.

INVERSE FLOATER. A bond or other type of debt whose coupon rate has an inverse relationship to a benchmark rate.

INVESTMENT OFFICIALS. This includes any applicable SDCP staff participating in the investment process; SDCP Treasurer; SDCP Deputy Treasurer(s); and SDCP Board of Directors.

LEVERAGE. Borrowing funds in order to invest in securities that have the potential to pay earnings at a rate higher than the cost of borrowing.

LIQUID. Term for securities that can be converted to cash quickly.

LIQUIDITY. The speed and ease with which an asset can be converted to cash.

LOCAL AGENCY INVESTMENT FUND (LAIF).

A voluntary investment fund open to government entities and certain nonprofit organizations in California that is managed by the State Treasurer's Office.

LOCAL GOVERNMENT INVESTMENT POOL.

Investment pools that range from the State Treasurer's Office Local Agency Investment Fund (LAIF) to county pools, to Joint Powers Authorities (JPAs). These funds are not subject to the same SEC rules applicable to money market mutual funds.

MARGIN. The difference between the market value of a security and the loan a broker makes using that security as collateral.

MARKET RISK. The risk that the value of securities will fluctuate with changes in overall market conditions or interest rates.

MARKET VALUE. The price at which a security can be traded.

MATURITY. The final date upon which the principal of a security becomes due and payable.

MEDIUM TERM NOTES. Unsecured, investmentgrade senior debt securities of major corporations which are sold in relatively small amounts on either a continuous or an intermittent basis. MTNs are highly flexible debt instruments that can be structured to respond to market opportunities or to investor preferences.

MODIFIED DURATION. The percent change in price for a 100 basis point change in yields. Modified duration is the best single measure of a portfolio's or security's exposure to market risk.

MONEY MARKET. The market in which short-term debt instruments (T-bills, discount notes, commercial paper, and banker's acceptances) are issued and traded.

MORTGAGE BACK SECURITY. Debt obligations that represent claims to the cash flows from pools of mortgage loans, most commonly on residential property.

MORTGAGE-DERIVED INTEREST-ONLY STRIPS.

A financial product created by separating the interest and principal payments of a mortgage-backed security.

MORTGAGE PASS-THROUGH SECURITIES.

A securitized participation in the interest and principal cash flows from a specified pool of mortgages. Principal and interest payments made on the mortgages are passed through to the holder of the security.

MUNICIPAL SECURITIES. Securities issued by state and local agencies to finance capital and operating expenses.

MUTUAL FUND. An entity which pools the funds of investors and invests those funds in a set of securities which is specifically defined in the fund's prospectus. Mutual funds can be invested in various types of domestic and/or international stocks, bonds, and money market instruments, as set forth in the individual fund's prospectus. For most large, institutional investors, the costs associated with investing in mutual funds are higher than the investor can obtain through an individually managed portfolio.

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO). A credit rating

agency that the Securities and Exchange Commission in the United States uses for regulatory purposes. Credit rating agencies provide assessments of an investment's risk. The issuers of investments, especially debt securities, pay credit rating agencies to provide them with ratings. The three most prominent NRSROs are Fitch, S&P, and Moody's.

NEGOTIABLE CD. A short-term debt instrument that pays interest and is issued by a bank, savings or federal association, state or federal credit union, or state-licensed branch of a foreign bank. Negotiable CDs are traded in a secondary market and are payable upon order to the bearer or initial depositor (investor).

PREMIUM. The difference between the par value of a bond and the cost of the bond, when the cost is above par.

RANGE NOTES. A structured investment where the coupon is linked to the performance of a reference index

REPURCHASE AGREEMENT. Short-term purchases of securities with a simultaneous agreement to sell the securities back at a higher price. From the seller's point of view, the same transaction is a reverse repurchase agreement.

SAFEKEEPING. A service to bank customers whereby securities are held by the bank in the customer's name.

SUPRANATIONAL. A Supranational is a multi-national organization whereby member states transcend national boundaries or interests to share in the decision making to promote economic development in the member countries.

TOTAL RATE OF RETURN. A measure of a portfolio's performance over time. It is the internal rate of return, which equates the beginning value of the portfolio with the ending value; it includes interest earnings, realized and unrealized gains, and losses in the portfolio.

U.S. TREASURY OBLIGATIONS. Securities issued by the U.S. Treasury and backed by the full faith and credit of the United States. Treasuries are considered to have no credit risk, and are the benchmark for interest rates on all other securities in the U.S. and overseas. The Treasury issues both discounted securities and fixed coupon notes and bonds.

TREASURY BILLS. All securities issued with initial maturities of one year or less are issued as discounted instruments, and are called Treasury bills. The Treasury currently issues three- and six-month T-bills at regular weekly auctions. It also issues "cash management" bills as needed to smooth out cash flows.

TREASURY NOTES. All securities issued with initial maturities of two to ten years are called Treasury notes, and pay interest semi-annually.

TREASURY BONDS. All securities issued with initial maturities greater than ten years are called Treasury bonds. Like Treasury notes, they pay interest semi-annually.

VOLATILITY. The rate at which security prices change with changes in general economic conditions or the general level of interest rates.

YIELD TO MATURITY. The annualized internal rate of return on an investment which equates the expected cash flows from the investment to its cost.

Rate Development Policy

Effective Date: November 17, 2022

Background

San Diego Community Power (SDCP) advocates for ratepayers by providing a choice of electricity providers and shifting control of local energy decisions from profit-driven, incumbent utility into the hands of residents and businesses located in our service jurisdiction. This creates competition in rates that benefits customers, increased transparency and ensures a better overall customer experience.

Purpose

This policy provides the framework for SDCP's Board of Directors and staff to ensure SDCP's rate design, development and implementation process remains transparent, fiscally responsible and centered on the customer.

As a public not-for-profit agency, SDCP must, at a minimum, set rates to recover costs associated with debt service and the purchase of power and operational costs. It is in the best interest of SDCP and its customers to design and implement rates that meet revenue requirements as well as targeted reserves, while maintaining rate competitiveness, stability and long-term financial viability.

General Criteria

SDCP has established various objectives and priorities that shall be considered as part of SDCP's rate design process. SDCP's rate setting objectives are as follows:

- 1. 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 in line with SDCP's Reserve Policy, which will provide funds to cover unanticipated expenditures, secure favorable terms with vendors, secure a standalone investment-grade credit rating and meet strategic objectives.
 - 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.
- 2. Rate Stability: rate changes should be minimized to reduce customer bill impacts with a preference for annual rate adjustments. Additionally, a Rate Stabilization Fund may be established and over time sufficiently funded to help mitigate significant swings in rates.

- 3. 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. SDCP reserves the right to design pilot rates as reviewed and approved by the Board.
 - 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. Cost-of-service studies are used to determine the total costs incurred by a utility in providing service to its customers and the allocation of those costs through rates back to customer classes. Revenue collected from each customer class then may be compared with that class's cost responsibility to determine the extent to which each class is reimbursing the utility for the costs it incurred in providing service.

SDCP's Rate Setting Timeline

SDG&E's Energy Resource Recovery Account (ERRA) application is usually approved by the CPUC in December, which provides the trajectory of bundled service commodity rates including the above market costs and other fees that will be passed on from SDG&E to all customers. Once the ERRA is approved, SDCP staff shall present proposed rates for the year to the Board in January of each year for review, deliberation and approval to be effective no later than February 15. With ever-changing market developments and regulatory climate, there may be instances where SDCP staff also proposes intrayear changes to rates.

To the greatest extent possible, SDCP's rates will be competitive with SDG&E's rates. With each SDG&E and SDCP rate change, both entities are required to work collaboratively to co-publish and post a Joint Rate Comparison on their respective websites to allow customers to easily see how rates compare.

Implementation of SDCP's Rates

SDCP's rate setting process is and will always be open and transparent to the public. SDCP's Board of Directors, which is composed of a representative from each of its member agencies, will set rates according to agreed-upon strategic goals of SDCP and the cost of service.

Prior to the implementation of new rates, the Board will review and deliberate the proposed rates in a public setting and take comments from the public.

Once the Board approves proposed rates, the rates will be published on SDCP's website in advance of their effective date, giving customers time to compare, budget and better understand what to expect on their bills going forward. For more information on SDCP's rates, visit

sdcommunitypower.org/billing-rates/residential-rates/ for residential rates or

sdcommunitypower.org/billing-rates/commercial-rates/ for commercial rates.

Fees passed on by SDG&E to "departing load" customers such as SDCP include the Power Charge Indifference Adjustment (PCIA) and Franchise Fees. The PCIA is a charge to ensure that both SDG&E customers and those who have left SDG&E service to purchase electricity from other providers pay for the above market costs for electric generation resources that were procured by SDG&E on their behalf. "Above market" refers to expenditures for generation resources that cannot be fully recovered through sales of these resources at current market prices.

The Franchise Fee is a surcharge applied to electricity transported over SDG&E systems that are constructed in public streets and highways. SDG&E collects the surcharge from customers and remits them to the appropriate municipality.

Glossary of Terms



Glossary of Terms

AB - Assembly Bill: An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly (rather than the Senate) is the bill's house of origin in the Legislature. In California, it is common for legislation to be referred to by its house of origin number even after it becomes law. However, because bill numbers "reset" and start again from 1 in each legislative session, it is less confusing to include chapter and statute information when referring to a bill that has become law; for example, SB 350 (Chapter 547, Statutes of 2015).

AL - Advice Letter: An Advice Letter is a request by a California Public Utilities Commission (CPUC) jurisdictional entity for Commission approval, authorization or other relief.

ALJ – Administrative Law Judge: ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB - Air Resources Board: The California Air Resources Board (CARB or ARB) is the "clean air agency" in the state government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AReM – Alliance for Retail Energy Markets:

A not-for-profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in select public policy forums at the state level. AReM represents direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN – Bay Area Regional Energy Network:

BayREN offers regionwide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

CAISO – California Independent System

Operator: A nonprofit public benefit corporation that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (approximately 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 the Federal Energy Regulatory Commission (FERC) and governed by a fivemember governing board appointed by the governor.

CalCCA – California Community Choice

Association: A statewide association, made up of Community Choice Aggregators (CCAs), that represents the interests of California's community choice electricity providers.

CALSEIA – California Solar Energy Industries

Association: CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants and educators. Members' annual dues support professional staff and a lobbyist who represents the common interests of California's solar industry at the Legislature, Governor's Office and state and local agencies.

CALSLA – California City-County Street Light

Association: A statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable streetlight electricity rates and facilities charges and disseminating streetlight-related information.

CAM - Cost Allocation Mechanism: The cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

CARB - California Air Resources Board: The

CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CARE – California Alternative Rates for Energy:

A state program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – Communities for a Better Environment:

An environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator:

A community choice aggregator, sometimes referred to as community choice aggregation, is an entity of local governments that procure power on behalf of their residents, businesses and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – City and County of San Francisco:

The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF. a CCA.

CEC - California Energy Commission: The primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – Coalition for Energy Efficiency:

A nonprofit composed of U.S. and Canadian energyefficiency administrators working together to accelerate the development and availability of energy-efficient products and services.

CLECA – California Large Energy Consumers

Association: An organization of large, high-load factor industrial customers located throughout the state; its members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging and mining industries and their electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission:

A state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit and passenger transportation companies, in addition to authorizing video franchises.

C&I - Commercial and Industrial: Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

CP - Compliance Period: Time period to become Renewables Portfolio Standard (RPS) compliant, set by the California Public Utilities Commission (CPUC).

DA – Direct Access: An option that allows eligible customers to purchase their electricity directly from thirdparty providers known as Electric Service Providers (ESPs).

DA Cap: The maximum amount of electric usage that may be allocated to Direct Access customers in California or, more specifically, within an investor-owned utility service territory.

DACC - Direct Access Customer Coalition: A

regulatory advocacy group composed of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements.

DA Lottery: A random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently applicable Direct Access Cap.

DA Waitlist: Customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC - Disadvantaged Community: "Disadvantaged communities" refers to the areas throughout California that most suffer from a combination of economic, health and environmental burdens. These burdens include poverty, high unemployment, air and water pollution and the presence of hazardous wastes as well as high incidences of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities statewide. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

DASR – Direct Access Service Request: Request submitted by C&I customers to become direct access eligible.

Demand: The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW) or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER - Distributed Energy Resource: A small-scale

physical or virtual asset (e.g., EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution: The delivery of electricity to the retail customer's home or business through low-voltage distribution lines.

DLAP - Default Load Aggregation Point: In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.

DR – Demand Response: An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DRP - Distributed Resource Plans: Plans that are required by statute and intended to identify optimal locations for the deployment of distributed resources.

DWR - Department of Water Resources: DWR is the state agency charged with managing California's water resources, systems and infrastructure in a responsible, sustainable way.

ECR – Enhanced Community Renewable: An

IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a developer at a level that meets at least 25% and up to 100% of their monthly electricity demand. The customer pays the developer for the subscribed output and receives a credit on their utility bill that reflects their enrollment level.

ED – Energy Division: The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission and ensure compliance with Commission decisions and statutory mandates.

EE – Energy Efficiency: The use of less energy to perform the same task or produce the same result. Energyefficient homes and buildings use less energy to heat and cool and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.

ELCC – Effective Load Carrying Capacity: The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources, the ELCC is the amount of capacity that 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 Pacific Gas and Electric (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 that can be recovered in rates. The utilities do not earn a rate of return on these costs and recover only actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ES – Energy Storage: The capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.

ESA – Energy Storage Agreement: A battery services contract, a capacity contract, demand response contract or similar agreement.

ESP - Energy Service Provider: An energy entity that provides service to a retail or end-use customer.

EV - Electric Vehicle: A vehicle that uses one or more electric motors for propulsion.

FCR – Flexible Capacity Requirements: "Flexible capacity need" is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as "flexible capacity" if they can sustain or increase output or reduce ramping needs during the hours of "flexible need." FCR means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC decisions.

GHG – Greenhouse gas: Water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane and chlorofluorocarbons (CFCs), which are gases that cause the atmosphere to trap heat radiating from the earth. The most common GHG is carbon dioxide.

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 for and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocate's Office and interested parties and for approval by the CPUC.

GTSR - Green Tariff Shared Renewables: The

GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

GWh – Gigawatt-hour: The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

ICA - Integration Capacity Analysis: The enhanced integrated capacity and locational net benefit analysis quantify the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy

Resources: A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSM – Integrated Demand-Side Management:

An approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

IEPA – Independent Energy Producers

Association: California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IMD - Independent Marketing Division: Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility: A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.

IRP - Integrated Resource Plan: A plan that outlines an electric utility's resource needs in order to meet expected electricity demand long-term.

kW - Kilowatt: A measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1,000 watts.

kWh - Kilowatt-hour: This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCE - Lancaster Choice Energy: The CCA that serves the City of Lancaster, California.

LCFS - Low Carbon Fuel Standard: A CARB

program designed to encourage the use of cleaner lowcarbon 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 composed of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

LNBA - Locational Net Benefits Analysis: A costbenefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

Load: An end-use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity: Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

LTPP – Long-Term Procurement Rulemaking:

This is an "umbrella" proceeding to consider, in an integrated fashion, all of the CPUC's electric procurement policies and programs.

MCE - Marin Clean Energy: The first CCA in California, which began serving customers in 2010. It serves customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – Marketing Education and Outreach: A

term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

MW - Megawatt: A megawatt hour (Mwh) is equal to 1,000 Kilowatt hours (Kwh) or 1,000 kilowatts of electricity used continuously for one hour.

MWH - Megawatt-hour: A measure of energy.

NAESCO – National Association of Energy **Service Companies:** An advocacy and accreditation organization for energy service companies (ESCOs). Energy service companies contract with private and public-sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – Non-Bypassable Charge: Fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement: A contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

NEM – Net Energy Metering: A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC - Natural Resources Defense Council: A nonprofit international environmental advocacy group.

NP-15 - North Path 15: NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in Northern California in PG&E's service territory.

OIR - Order Instituting Rulemaking: A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five commissioners of the CPUC.

OSC - Order to Show Cause: An order requiring an individual or entity to explain, justify or prove something.

ORA – Office of Ratepayer Advocates: The independent consumer advocate within the CPUC, now called the Public Advocates Office.

PA – Program Administrator (for EE Business

Plans): IOUs and local government agencies authorized to implement CPUC-directed energy efficiency programs.

PCE – Peninsula Clean Energy Authority: A CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

PCC1 – RPS Portfolio Content Category 1: Bundled renewables where the energy and Renewable Energy Certificate (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 Renewable Energy Certificate (REC) are from out of state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3:

Unbundled Renewable Energy Certificate (REC).

PCIA or "exit fee": The 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 (Chapter 313, Statutes of 2009) and SB 1305 (Chapter 796, Statutes of 1997).

PD - Proposed Decision: A procedural document in a CPUC Rulemaking that is formally commented on by parties to the proceeding. A PD is a precursor to a final decision voted on by the five commissioners of the CPUC.

PG&E - Pacific Gas & Electric: The IOU that serves 16 million people over a 70,000-square-mile service area in Northern California.

PHC - Prehearing Conference: A CPUC hearing to discuss the scope of a proceeding, among other matters. Interested stakeholders can request party status during these conferences.

Pnode - Pricing Node: In the CAISO optimization model, this is a point where a physical injection or withdrawal of energy is modeled and for which an LMP is calculated.

PPA – Power Purchase Agreement: A contract used to purchase the energy, capacity and attributes from a renewable resource project.

PRP - Priority Review Project: Transportation electrification pilot projects approved by the CPUC pursuant to SB 350 (Chapter 547, Statutes of 2015).

PRRR – Progress on Residential Rate Reform:

Pursuant to a CPUC decision, the IOUs must submit to the CPUC and other parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC - Public Utilities Code: A California statute that contains 33 divisions; the range of topics within this code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities; the primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act:

A federal statute passed in 1978 by Congress in response to the 1973 energy crisis to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was intended to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply).

RA – Resource Adequacy: Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities investor-owned utilities, electricity service providers and CCAs — to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RAM – Renewables Auction Mechanism: A

procurement program the investor-owned utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs and any need arising from commission or legislative mandates.

RE – Renewable Energy: Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate: A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every megawatt-hour of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer: This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – Request for Offers: A competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

RPS - Renewable Portfolio Standard: A law that requires California utilities and other load-serving entities (including CCAs) to provide an escalating percentage of California qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB – Senate Bill: A piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the Legislature for the legislation.

SCE – Southern California Edison: The large IOU that serves the Los Angeles and Orange County area.

SCP - Sonoma Clean Power Authority: The CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E - San Diego Gas & Electric: The IOU that serves San Diego County and owns the infrastructure that delivers Community Power energy to our customers.

SGIP – Self-Generation Incentive Program: A program that provides incentives to support existing, new and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.).

SUE – Super User Electric: An electric surcharge intended to penalize consumers for excessive energy use.

SVCE – Silicon Valley Clean Energy: The CCA serving the communities in Santa Clara County.

TCR EPS Protocol – The Climate Registry **Electric Power Sector Protocol:** Online tools and resources provided by The Climate Registry to assist organizations to measure, report and reduce carbon emissions.

TE – Transportation Electrification: For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles and medium- and heavy-duty trucks and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates: The pricing of delivered electricity based on the estimated cost of electricity during a particular time block. Time-of-use rates are usually divided into three or four time blocks per 24 hour period (on-peak, mid-peak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real-time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TM - Tree Mortality: A term that refers to the death of forest trees and provides a measure of forest health. In the context of energy, as part of the Governor's Tree Mortality Emergency Proclamation, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

TURN – The Utility Reform Network: A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs: Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are "unbundled" and sold to different buyers.

VPP - Virtual Power Plant: A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

VAMO - Voluntary Allocation, Market Offer: The process for SDG&E to allocate a proportional share of its renewable portfolio to Community Power and other LSEs within the service territory.

Budget Resolution



Budget Resolution Pending



Acknowledgments



Acknowledgments

Finance Department

San Diego Community Power's Finance Department works to maintain a fiscally responsible budget in accordance with Community Power's Budget Policy. The department ensures sufficient funding to meet procurement needs, sustain operational needs, and support sustained growth while delivering clean energy to the communities we serve. In addition, the team actively works to build Community Power's reserves and develop policies that consider future economic conditions, provides an understandable and transparent operating budget for internal and external users, strives to keep the Community Power Board, committees and staff informed of Community Power's fiscal condition and develops a budget that will ultimately prioritize people, transparency and our communities.

Board of Directors

Mayor Paloma Aguirre, Chair Supervisor Terra Lawson-Remer, Vice Chair Councilmember Sean Elo-Rivera, Director Councilmember Marco San Antonio. Director Councilmember Michael Inzunza, Director Councilmember Genevieve Suzuki, Director Councilmember Ditas Yamane, Director

Finance and Risk Management Committee

Councilmember Ditas Yamane, Chair Councilmember Genevieve Suzuki, Vice Chair Councilmember Michael Inzunza, Director

Community Advisory Committee

CHULA VISTA

- · Anthony Sclafani
- (Vacant)

COUNTY OF SAN DIEGO

- Peter Andersen
- · Ross Pike

ENCINITAS

- · Gary L. Jahns
- Tara Hammond

IMPERIAL BEACH

- · Ilian Sandoval
- · Kenneth Hoyt

LA MESA

- David Harris
- Shaun Sumner

NATIONAL CITY

- · Aida Castañeda
- · Larry Emerson

SAN DIEGO

- · Luis Montero-Adams
- · Matthew Vasilakis

Community Power Executive Team

Karin Burns, Chief Executive Officer Eric Washington, Chief Financial Officer and Deputy Chief Executive Officer/Treasurer Jack Clark, Chief Operating Officer Veera Tyagi, General Counsel Byron Vosburg, Chief Commercial Officer*

Finance Department

Eric Washington, Chief Financial Officer and Deputy Chief Executive Officer/Treasurer Tim Manglicmot, Director of Finance Christopher Stephens, Procurement Manager Diana Gonzalez, Risk Manager Mark Alfaro, Finance Manager Jeb Spengler, Strategic Finance Manager Christopher Do, Senior Financial Analyst Julissa Mercedes, Financial Analyst Kevin Bateman, Financial Analyst

*Formerly titled Managing Director Power Services

ITEM 11 ATTACHMENT B



Capital Investment Plan (CIP)
Fiscal Years 2026–2030

Contents

ŀ	low to Use This Book	1
F	Letter from the Chief Executive Officer	2
(Capital Investment Plan Overview	5
(Overview of San Diego Community Power	8
	Who We Are	8
	About Community Choice	9
	Governance and Structure	10
	Organizational Structure	10
(Capital Investment Plan (CIP)	12
	About the CIP	12
	CIP Development Process	12
5	Strategic Planning	14
	Core Strategic Goals	15
(Community Engagement	18
	Community Engagement Process	18
	Prioritizing Equity and Communities of Concern	20
(Capital Program Areas	22
	Program Type Overview	22
	Program Type 1. Energy Awareness and Education	23
	Program Type 2. Application Assistance	24
	Program Type 3. Disadvantaged Communities Green Tariff	25
	Program Type 4. Pilot Programs	26
	Program Type 5. Grant Programs	27
	Program Type 6. Building Electrification: Heat Pump Technology	28
	Program Type 7. Planning & Studies	29
	Program Type 8. Distributed Energy Resources: Energy Storage Systems	30
	Program Type 9. Distributed Energy Resources: Demand Response	31
	Program Type 10. Energy Efficiency	32
	Program Type 11. Transportation Electrification: Infrastructure	33
	Program Type 12. Transportation Electrification: Light-Duty Vehicles	34
	Program Type 13. Transportation Electrification: Medium- and Heavy-Duty Vehicles	35
	Program Type 14. Information Technology: Upgrades	36

Funding Guide	39
Internal versus External Funding	39
External Sources	40
Funding Guide	40
	•
Budget Resolution	43
Acknowledgments	45
List of Figures	
FIGURE 1. CCAS IN CALIFORNIA	9
FIGURE 2. COMMUNITY POWER MEMBER AGENCIES	10
FIGURE 3. ORGANIZATIONAL CHART	10
FIGURE 4. CIP DEVELOPMENT PROCESS	12
FIGURE 5. SAN DIEGO COMMUNITY POWER MISSION STATEMENT	14
FIGURE 6. SAN DIEGO COMMUNITY POWER VISION STATEMENT	14
FIGURE 7. CORE STRATEGIC GOALS	16
List of Tables	
TABLE 1. FY 2025-2026 CAPITAL BUDGET	5
TABLE 2. FY 2026–2030 CIP PROGRAMS AND PROJECTS	6
TABLE 4. COMMUNITY NEEDS ASSESSMENT	19
TABLE 2. ENERGY AWARENESS AND EDUCATION PROJECTS	23
TABLE 3. APPLICATION ASSISTANCE PROJECTS	24
TABLE 4. DISADVANTAGED COMMUNITIES GREEN TARIFF PROJECTS	25
TABLE 5. PILOT PROGRAMS PROJECTS	26
TABLE 6. GRANT PROGRAMS PROJECTS	27
TABLE 7. BUILDING ELECTRIFICATION HEAT PUMP TECHNOLOGY PROJECTS	28
TABLE 8. PLANNING & STUDIES PROJECTS	29
TABLE 9. DISTRIBUTED ENERGY RESOURCES: ENERGY STORAGE SYSTEMS PROJECTS	30
TABLE 10. DISTRIBUTED ENERGY RESOURCES: DEMAND RESPONSE PROJECTS	31
TABLE 11. ENERGY EFFICIENCY PROJECTS	32
TABLE 12. TRANSPORTATION ELECTRIFICATION: INFRASTRUCTURE PROJECTS	33
TABLE 13. TRANSPORTATION ELECTRIFICATION: LIGHT-DUTY VEHICLES PROJECTS	34
TABLE 14. TRANSPORTATION ELECTRIFICATION: MEDIUM- AND HEAVY-DUTY VEHICLES PROJECTS	35
TABLE 15. INFORMATION TECHNOLOGY UPGRADES PROJECTS	36
TABLE 16. COMMUNITY POWER FUNDING GUIDE	40

How to Use This Book

The San Diego Community Power (Community Power) proposed Fiscal Years (FY) 2026–2030 Capital Investment Plan (CIP) contains agency budgetary and fiscal policy information as well as detailed agency capital investment plans. The proposed Capital Investment Plan is organized into the following sections.

Executive Summary

Includes the Chief Executive Officer's Letter for the proposed CIP and provides a high-level overview of the agency's capital budget and other high-level details on specific projects and their benefits to the community.

Capital Investment Plan Overview

Describes the CIP in brief, including summary tables that reflect the operating transfer into the CIP as well as the list of projects planned for the next five years.

Overview

Provides a high-level overview of Community Power's governance, structure and agency values and priorities.

Community Engagement

Outlines the outreach process to the community that provided feedback and significant input into project and program design.

Program Types

Includes the 14 program types, projects and funding within these types falling into short-, medium- and long-term segments that will be delivered within the CIP.

Funding Guide

Explains funding sources that fund the CIP as well as future potential funding sources that Community Power can leverage and apply for to bolster CIP funding amounts.





A Letter from the Chief Executive Officer

At San Diego Community Power, we are shaping a future that is both sustainable and equitable. As a not-for-profit public agency and Community Choice Aggregator (CCA), we were created to bring competition to the local energy marketplace, offering cleaner energy at competitive rates and reinvesting revenues back into our communities.

Since launching in 2021, we've grown significantly in both reach and impact. In 2024, we remained focused on our mission: delivering reliable, clean power at competitive rates while advancing programs that make a tangible difference for our customers.

Affordability and long-term value remain central to our strategy. In February 2025, we reduced rates for the second year in a row — thanks to prudent financial planning and favorable market conditions — providing most customers with a discount compared with San Diego Gas & Electric's electricity generation rates.

Every decision we make, from lowering rates to expanding service options, is grounded in the needs of our customers and communities. Last summer, we introduced two new service options: Power100 Green+, for commercial customers seeking the highest level of renewable energy, and PowerBase, a more affordable option that still meets California's clean energy standards

Even as we deliver near-term savings, we continue to plan for long-term energy security and stability. The broader power market remains volatile, shaped by a constrained statewide resource supply and uncertain federal tax credit and trade policies. Our Power Services team is navigating these challenges through disciplined procurement and long-range planning.

To date, we've executed 17 long-term power purchase and energy storage agreements that will deliver reliable, renewable electricity to nearly 1 million homes and businesses across our region. These investments not only support our goal of 100% renewable energy by 2035, but also help insulate customers from future price spikes.

In 2024, we marked a major milestone with the ribbon cutting of the Vikings Solar and Storage Project in Imperial County. Developed by Arevon, with Community Power as the offtaker, Vikings is more than just a solar generation site. As one of the first utility-scale solar peaker plants in the United States, the project is designed to keep the lights on and costs down when demand is at its highest powering the equivalent of 50,000 San Diego homes with clean, affordable energy. It exemplifies our broader procurement strategy: securing long-term renewable power while creating local and regional economic opportunity.

In addition to expanding customer choice and value, we've made progress on delivering innovative solutions that support customers across the region. Last summer, we launched our largest customer program to date, Solar Battery Savings, which offers upfront and performance-based incentives for home battery systems that boost resilience and reduce grid demand during peak hours. The program was recognized in the U.S. Department of Energy's 2025 Virtual Power Plant Liftoff Report as a model for customer-centered innovation in distributed energy.

We also secured approval from the California Public Utilities Commission to launch the San Diego Regional Energy Network (SDREN) in partnership with the County of San Diego. SDREN will generate nearly \$125 million in energy efficiency resources for the region through 2027 and marks the final major population area in California to establish a Regional Energy Network.



As we grow, we're also investing in the internal systems and strategic planning necessary to scale effectively, operate efficiently and remain accountable to the public.

The proposed FY 2026–2030 Capital Investment Plan (CIP), alongside the proposed FY 2025–2026 budget, reflects these priorities as we transition toward our mid-term program strategy, which focuses on optimizing customer energy use around time-of-use rate schedules and individual preferences. These efforts reduce participants' bills while lowering major cost drivers like energy procurement and resource adequacy — creating system-wide savings that benefit all ratepayers. In the years ahead, we will continue building the tools and incentives that align customer behavior with grid needs, helping make our clean energy system smarter, more affordable and more resilient.

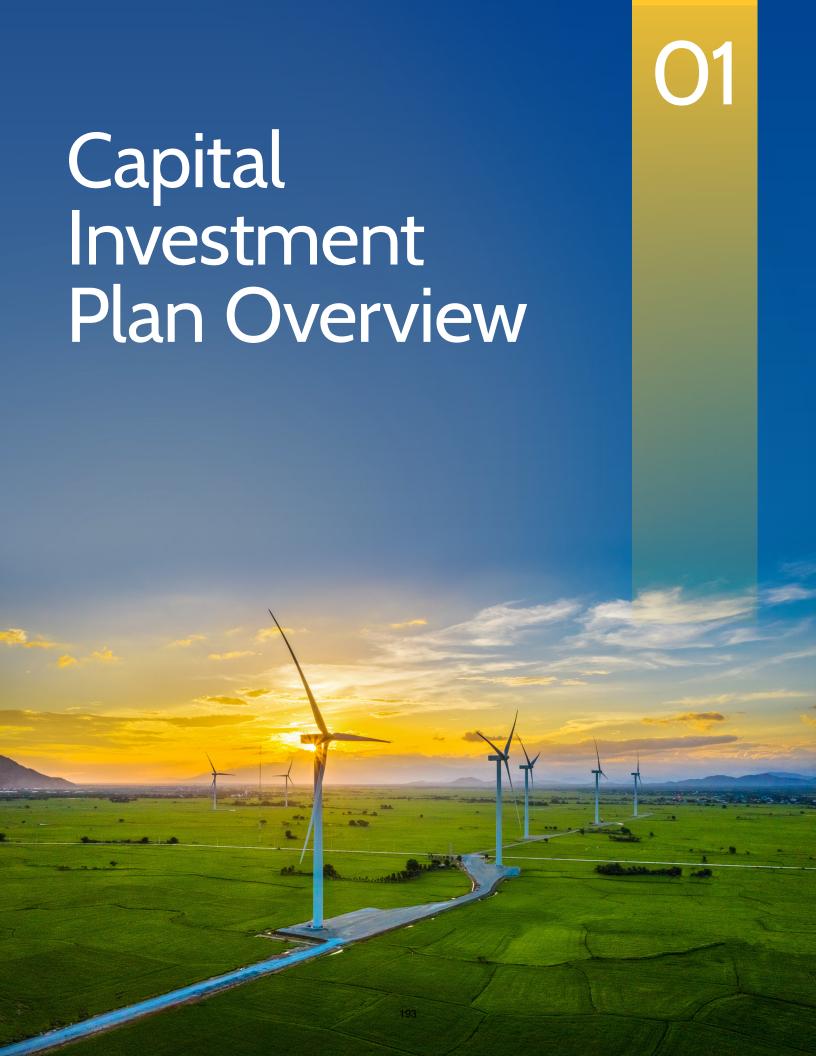
As we look ahead, our focus remains on driving measurable impact: accelerating the region's clean energy transition, supporting local climate goals and building a more just and resilient energy system. With the continued leadership of our Board of Directors, Community Advisory Committee and dedicated staff, San Diego Community Power is proud to power the path toward a cleaner, more resilient future — together.

Thank you for your continued trust and partnership.

Chief Executive Officer

Varin Hurns

San Diego Community Power



Capital Investment Plan Overview

San Diego Community Power developed its first Capital Investment Plan (CIP) for FY 2024-2028 and continues to grow it with the FY 2026-2030 CIP, which contains all the individual capital projects, major equipment purchases and major programs for the agency that are intended to span multiple years. The FY 2025–2026 budget proposes 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, community grants, a customer education platform and other areas as outlined in the short- and medium-term program areas. Given the number of planning and pilot projects, the Community Power CIP is largely funded by internal funding that allows maximum flexibility in the planning phase with designing programs and projects. This allows the agency to focus on

designing based on community and agency needs rather than based on the requirements requested by a funding agency. The planning phase of a program or project also requires less funding when compared with implementation or design and construction. As Community Power builds reserve funds and endeavors to maximize impact, Community Power will leverage the CIP to aggressively pursue external funding from sources such as state and federal agencies.

TABLE 1. FY 2025-2026 CAPITAL BUDGET*

	Carry Forward ¹	FY26 Authorized Budget	FY26 Proposed Budget
Operating Transfer In	7.5	-	21.4
Regional Energy Network ²	0.3	31.8	31.8
DAC-GT	0.5	0.3	0.3
CDFA	0.5	-	-
Equitable Building Decarbonization	1.5	-	-
Other	-	-	0.9
CIP Revenue	10.3	32.1	54.4

^{*}Amounts displayed in millions of dollars

The Carry Forward amount represents actual financial data through March 31, 2025, and will be reconciled at the close of fiscal year 2024–2025.

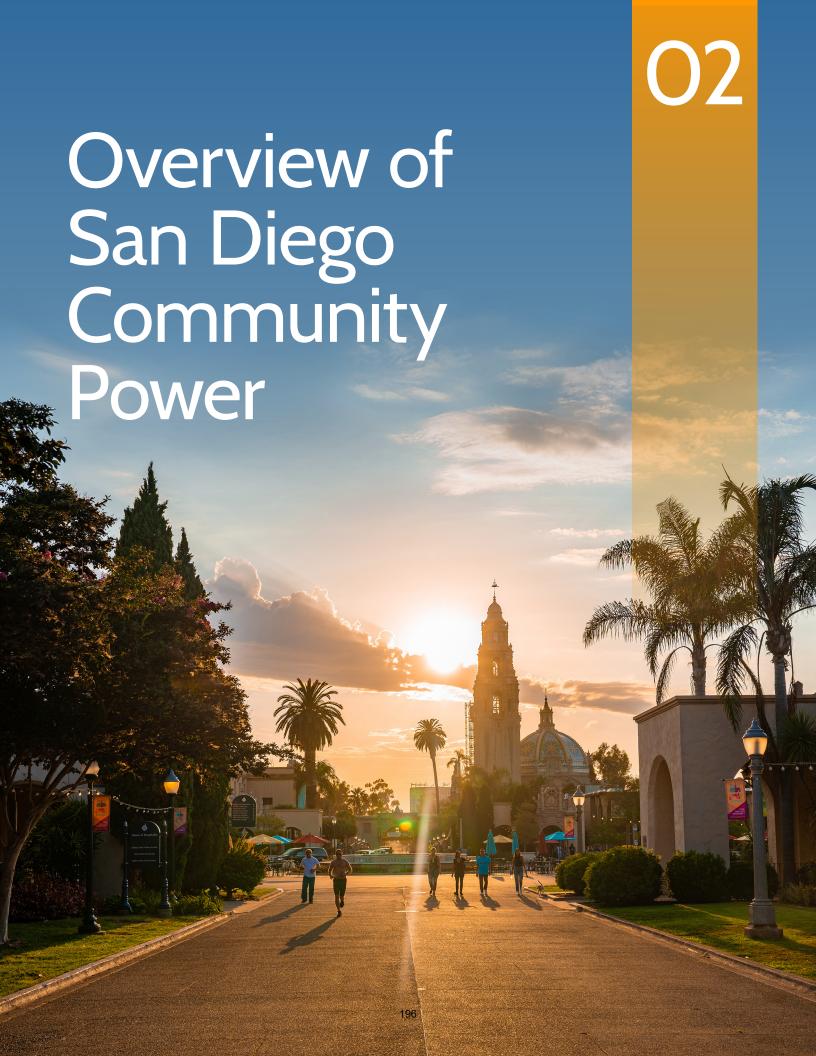
²The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Years 2024–2027.

The first year of the CIP is appropriated as part of Community Power's annual budget process and becomes the adopted capital budget for the fiscal year. The subsequent years of the CIP are planned expenses that are subject to Board approval during the annual budget process and are subject to change.

TABLE 2. FY 2026-2030 CIP PROGRAMS AND PROJECTS

	Beginning Bal.	Expenses	Carry Forward ¹	5-Year Budget					
	FY25	FY25	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding									
Regional Energy	2.1	1.8	0.3	31.8	59.5	51.4	42.0	43.7	228.7
Network	2.1	1.0	0.5	31.0	37.3	31.4	42.0	43.7	220.7
DAC-GT	0.9	0.4	0.5	0.3	0.5	0.5	0.5	0.5	2.7
CDFA	0.7	0.2	0.5	-	-	-	-	-	0.5
Equitable Building Decarbonization	1.5	-	1.5	-	1	-	1	-	1.5
Other	-	-	-	0.9	-	-	-	-	0.9
Subtotal	5.2	2.4	2.8	33.0	60.0	51.9	42.5	44.2	234.4
Internal Funding									
Solar Battery Savings	10.6	7.9	2.7	18.8	11.1	10.4	8.3	8.5	59.8
Energy Efficiency	0.3	0.3	-	-	-	-	-	-	-
Pilot Programs	3.0	1.3	1.7	-	-	-	-	-	1.7
Grants	0.8	0.3	0.7	0.8	-	-	-	-	1.5
DER	0.1	0.0	0.1	-	-	-	-	-	0.1
Flexible Load	0.6	0.5	0.2	0.3	0.6	0.6	0.8	0.7	3.1
IT Projects	2.6	0.6	2.0	1.5	-	-	-	-	3.5
Community Education	0.1	0.0	0.0	-	-	-	-	-	0.0
Program Evaluation	-	1	-	0.3	-	-	1	-	0.3
Other	-	-	-	0.2	_	-	-	-	0.2
Subtotal	15.4	11.1	7.5	21.4	11.7	11.0	9.1	9.2	69.9
CIP Expense Total	20.6	13.5	10.3	54.4	71.7	62.9	51.6	53.4	304.3

The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Years 2024–2027 but given the size of the program, it is reflected in this table as anticipated spending by fiscal year.



Overview of San Diego Community Power

Who We Are

San Diego Community Power is a Community Choice Aggregator (CCA) that gives customers an option to power their homes and businesses with significantly higher levels of renewable power at competitive rates. Since 2021, Community Power has grown to serve nearly 1 million residential, business and municipal power customers in the cities of San Diego, Chula Vista, Encinitas, Imperial Beach, La Mesa and National City as well as the unincorporated communities of San Diego County.

Community Power is a not-for-profit public agency that provides affordable clean energy and invests in its local communities to create an equitable and sustainable future for the San Diego region.

Learn more at www.sdcommunitypower.org.

Our Story

With support from local communities, Community Power was established as a Joint Powers Authority by five cities within the San Diego region. Community Power submitted an implementation plan to the California Public Utilities Commission, outlining the intended organizational structure, operations and funding. Once approved, our Board of Directors began to meet regularly, and implementation activities began. In 2020, a sixth city and the County of San Diego elected to join Community Power.

Community Power serves nearly 1 million customers with competitively priced clean energy; we are beginning to offer customer programs and rebates as well as supporting San Diego County's energy efficiency goals through the San Diego Regional Energy Network (SDREN).



About Community Choice

San Diego Community Power is a Community Choice Aggregator (CCA) — one of dozens that have formed throughout California over the past 20 years. There are currently 25 CCAs serving over 14 million customers in California.

Through CCAs, communities can join together to pool (or aggregate) their electricity load in order to purchase clean energy and develop local clean energy projects and programs on behalf of their residents and businesses. CCAs like Community Power work in partnership with the region's existing investor-owned utilities (SDG&E in our case), which continue to deliver power and maintain the grid.

How It Works



CCAs are making good on their commitments to invest in new renewable energy facilities throughout California. To date, CCAs have contracted for more than 18,000 megawatts (MW) of new clean generation capacity through long-term power purchase agreements (PPAs) with terms of 10 years or more. CCA PPAs equate to:

- More than 18 gigawatts (GW) of new solar, wind, energy storage, geothermal and demand response resources
- Projects totaling more than 7,900 MW that are already operational and serving CCA customers
- More than \$37 billion committed by CCAs to build and operate clean energy resources
- Support for more than 36,000 construction jobs

FIGURE 1. CCAS IN CALIFORNIA



Governance and Structure

In September 2019, the cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa adopted an ordinance and resolution to form San Diego Community Power, a California Joint Powers Authority (JPA). In 2021, National City and the County of San Diego voted to join Community Power.

Community Power's Board of Directors is composed of an elected representative from each member jurisdiction, with each member having an alternate from the agency they represent. The Board is publicly accountable to Community Power ratepayers and hosts monthly Board meetings, where it establishes policy, sets rates, determines power purchase options and maintains fiscal oversight.

As a public agency, Community Power is designed to be fully transparent with all official meetings and information open or available to the public.

FIGURE 2. COMMUNITY POWER MEMBER AGENCIES









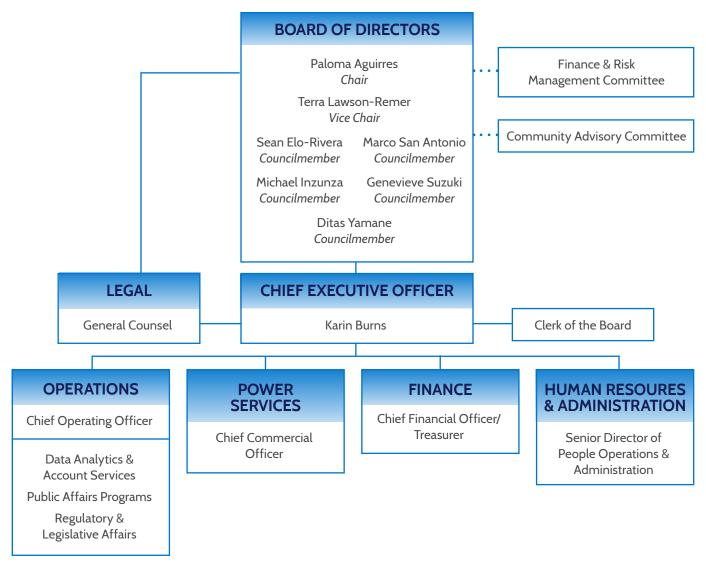






Organizational Structure

FIGURE 3. ORGANIZATIONAL CHART



03

Capital Investment Plan



Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2026-2030 Capital Improvement Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$304.3 million in investments across Community Power member jurisdictions. Projects include a number of short- and medium-term programs and projects that are largely pilot and planning studies. This allows Community Power to thoughtfully plan and design its projects and programs — based on community and agency needs — to deliver programs and projects that provide maximum public impact and that can potentially leverage other local, state and federal funds.

This plan continues Community Power's commitment to plan and finance programs and projects that align with community and organizational priorities. The programs and projects compose a list that provides Community Power with the confidence to target a core set of program types focused on community needs. It also gives Community Power the flexibility to co-design programs with community partners and to be responsive to external funding opportunities as they emerge.

This plan is not a final or absolute list of funded projects and projects may not have funding identified. Each funded and partially funded project shows a potential source of funding but this does not necessarily indicate that actual funding of the project has occurred. As design requirements, budgets and priorities change, the planned projects may also move within the plan or drop out entirely.



Likewise, this list is not all inclusive. Unexpected requirements often cause unforeseen projects to be inserted into the design and execution process. Furthermore, funding sources identified in the CIP are potential funding sources that may not materialize. Projects, programs and funding are additionally subject to Board approval consistent with the JPA and the internal policies and programs of the agency.

CIP Development Process

Community Power will update the CIP annually during its budget development process. Programs and projects are included in the CIP based on alignment with Community Power's strategic goals and based on community engagement.

The proposed capital budget and CIP undergo a public outreach process comprising a wide range of stakeholder groups. Additionally, the CIP is a dynamic document that is intended to be updated regularly as needs shift or as fund availability changes. All subsequent updates to the CIP will be brought to the Board for approval.

FIGURE 4. CIP DEVELOPMENT PROCESS





Strategic Planning

San Diego Community Power's budgeting process, including its CIP, is directly informed by its Strategic Plan — a document co-created by our Board, our CAC, our executives and our team — that translates community priorities into actionable goals. The Strategic Plan is a critical management tool, helping to align resources, guide operational decisions and drive long-term organizational focus across every department and initiative.

Now three years into our first strategic planning cycle, Community Power has reached a pivotal inflection point. Since the adoption of our 2023–2027 Strategic Plan in June 2022 and its subsequent update in April 2023, we've achieved many of the ambitious goals we set, made meaningful progress on others and thoughtfully recalibrated where needed. From October 2024 to March 2025, we embarked on a process of revising and updating our strategic plan, setting aggressive new goals while continuing to focus our efforts, build our organization and deliver on the promise of community choice.

What hasn't changed is our mission, vision and core values. These foundational statements continue to guide our work even as we refine our priorities and strategies to reflect new opportunities, challenges and lessons learned. With

FIGURE 5. SAN DIEGO COMMUNITY POWER MISSION STATEMENT



Mission Statement

To provide affordable clean energy and invest in the community to create an equitable and sustainable future for the San Diego region.

our team, customer base and clean energy infrastructure significantly expanded, we now turn toward a new two- to three-year horizon — one defined by sustained growth, increased financial responsibility and a deeper investment in the people and systems that power our organization.

As we evolve, we continue to ask a simple but powerful question: Does this activity serve our purpose? Every program, investment and initiative we pursue should answer "yes" to at least one of the following:

- Does it make energy more affordable for our customers?
- · Does it make things easier for our customers?
- · Does it make our energy more renewable?
- · Does it maintain or improve the health of our organization?
- · Does it build trust with our communities, stakeholders and local governments?

These questions — and the values underlying them — serve as a filter and a guidepost, helping to ensure that our Strategic Plan remains grounded in what matters most to our customers and communities.

FIGURE 6. SAN DIEGO COMMUNITY POWER VISION STATEMENT



As part of this new planning phase, Community Power has identified four overarching themes to guide our work:



Fiscal Sustainability

We remain committed to building strong financial reserves, managing risk and pursuing strategies like clean energy prepay transactions that can reduce long-term costs for customers.



Infrastructure Investment

This includes both internal infrastructure, such as IT, legal, data and policy capacity, and external infrastructure, including local battery storage, distributed energy resources and virtual power plant development.



Customer Affordability

Affordability remains the top concern voiced by our community and is front of mind with every power purchase, financial hedge, compliance obligation or additional long-term power resource we contract with to support our short- and long-term procurement efforts. Our additional activities - ranging from the development of targeted rates like PowerBase to launching the San Diego Regional Energy Network — will continue to focus on reducing energy bills while meeting state policy goals.



People

As we grow, so does our responsibility to ensure a resilient and inclusive workplace culture. We are investing in management training, professional development and succession planning to ensure strong continuity and a high level of staff retention.

Together, these priorities inform the structure of our proposed FY 2025–2026 budget and the evolution of our Strategic Plan. That work is organized around seven long-term Strategic Goals that anchor the agency's planning and performance management. These goals guide not only how we invest our resources but also how we measure our progress as a public agency accountable to the communities we serve.

Core Strategic Goals

1. Fiscal Sustainability

Practice fiscal strategies to promote long-term organizational sustainability.

- Execute at least six clean prepayment transactions over the next three years to generate \$30 million in annual power cost savings.
- Obtain a public investment-grade credit rating by November 2027.
- Grow reserves by \$150 million to maintain 180 days' cash on hand by December 2027.
- Build a \$70 million Rate Stabilization Reserve to mitigate cost volatility.
- Strengthen financial controls across contracting, risk management and procurement.

2. Energy Portfolio Development

Provide sufficient, affordable and clean electricity to our customers.

- Reach 100% renewable energy by 2035, with interim goals of 75% by 2027 and 85% by 2030.
- Support development of 1 gigawatt of new local clean energy capacity by 2035, including 300 MW of infill and distributed energy resources (DERs).
- Ensure reliable and cost-effective compliance with all regulatory requirements.
- · Create good-paying local jobs in clean energy sectors.

3. Community Program Delivery

Implement programs that reduce greenhouse gas emissions, align energy supply and demand and benefit our diverse communities.

- Deliver 150 MW of local DER capacity (of the 300 MW total goal) by 2035 through programs like Solar Battery
- Launch all San Diego Regional Energy Network (SDREN) programs by FY 2026-2027.
- Implement a robust program evaluation framework by FY 2026-2027.
- Expand external funding for clean energy programs.

4. Legislative and Regulatory Advocacy

Advance policies that support Community Power's mission and customer goals.

- · Educate policymakers and regulators to influence outcomes consistent with our policy platform.
- Support and sponsor legislation aligned with our values and needs.
- Remain an active participant in coalitions such as CalCCA to amplify our voice.
- · Strategically pursue public funding aligned with agency goals.

5. Trusted Brand Building

Build a trusted brand that supports engagement, participation and program success.

· Position San Diego Community Power as a collaborative public agency rooted in transparency.

- · Grow the Power Network of nonprofit and communitybased partners to expand community reach.
- · Elevate brand awareness through education and outreach.
- · Empower customers to take advantage of savings and services through awareness, education and ongoing communication programs.

6. Customer Care

Ensure high customer satisfaction and retention.

- Refine rate structures to balance affordability, clean energy and fiscal prudence.
- Resolve SDG&E billing issues and improve customer experience.
- Explore options for a best-in-class customer service model.
- · Address arrearages and connect customers with available resources.

7. Organizational Excellence

Foster an innovative, inclusive and resilient workplace.

- Transition into a learning organization by late 2026 with robust staff development.
- · Maintain a high level of employee satisfaction through engagement and continuous feedback.
- · Launch a new internship program for local college students by FY 2027

FIGURE 7. CORE STRATEGIC GOALS



05

Community Engagement



Community Engagement

Community Engagement Process

As a public agency with a deep commitment to transparency and community accountability, Community Power approaches outreach not as a one-time event, but as a continuous, year-round effort. Our financial planning, including the development of the Capital Investment Plan (CIP), is directly informed by ongoing engagement with customers, stakeholders and local leaders, ensuring our investments reflect the needs and priorities of the people we serve.

Community Power Plan (CPP)

A key milestone shaping Community Power's customer engagement and investment strategies is the Community Power Plan (CPP), adopted by the Board of Directors on May 25, 2023. The CPP provides strategic direction for customer energy program development over a five-year time frame and is instrumental in guiding CIP investments.

As a not-for-profit public agency, Community Power is committed to designing programs that are communitydriven, with a particular focus on uplifting Communities of Concern. The CPP was built through extensive outreach and partnership building, helping Community Power strengthen ongoing relationships with residents, community-based organizations and stakeholders across the region. Between May and November 2022, Community Power engaged more than 3,450 community members through listening sessions, workshops, pop-up events and a customerwide survey prioritizing equity and reaching harder-to-engage populations. The CPP's foundational community needs assessment shaped both short-term priorities and a longer-term framework for program evaluation and design.

Rather than treating outreach and partnership building as a one-time effort, the CPP established a foundation for ongoing dialogue and partnership between Community Power and the communities we serve — a commitment that continues through the CIP and program design. This communitycentered approach informs all areas of our work, including public meetings, partnerships with local organizations and targeted outreach efforts to ensure clean energy opportunities are accessible, equitable and responsive to community needs.

Public Meetings and Oversight

Core to our transparency is the public nature of our governance. Per our Rate Development Policy, rate setting is conducted via a public process, developed by staff and approved by our Board of Directors — all through open meetings where the public is encouraged to participate. Our Board is publicly accountable to Community Power ratepayers and hosts monthly Board meetings where it not only sets rates, but also establishes policy, determines power options and maintains fiscal oversight. Similarly, our Board is informed by a subset of members on the Finance and Risk Management Committee (FRMC), and the Community Advisory Committee (CAC) advises the Board and provides a venue for ongoing citizen support and engagement in Community Power. These monthly forums create meaningful opportunities for public input and serve as a foundation for budget and investment planning.







We also ensure customers have access to clear, timely information about their energy service. Our annual Joint Rate Comparison — published in coordination with SDG&E provides a side-by-side rate and service overview. The Power Content Label offers transparency into the energy sources we procure, reinforcing our commitment to cleaner energy.

Our website is another key transparency tool, offering customers easy access to rate options, program details, meeting materials and more. Specifically, the bill comparison calculator offers customers an opportunity to evaluate Community Power rates alongside those of SDG&E. As part of our continued commitment to improving the customer experience, we are currently undertaking a website redesign to make resources easier to find, understand and apply.

Targeted Outreach and Engagement

Beyond formal governance, Community Power engages directly with the communities we serve. We regularly present agency updates to our member cities' elected bodies including updates in early 2025 — and actively participate in community events across the region.

In 2024 alone, Community Power participated in more than 151 community events, resulting in 18,539 unique public interactions through in-person engagement.



Our outreach efforts are bolstered by strategic partnerships and media initiatives, such as the ongoing "Working for Our Communities" campaign with CBS 8, helping extend our reach and impact.

Through quarterly newsletters, targeted sponsorships, social media campaigns and our new comprehensive customer survey launched alongside our brand refresh, we continue to invite customers to shape Community Power's path forward. These efforts help maintain a strong feedback loop, ensuring that our Capital Investment Plan and broader strategic initiatives reflect not only fiscal responsibility but also community vision, equity and shared clean energy goals.

TABLE 4. COMMUNITY NEEDS ASSESSMENT

ENGAGEMENT METHOD	Estimated Number Engaged
Community-Based Organization Co-hosted Listening Sessions (2 Rounds)	325
Business, Key Stakeholders and Public Listening Workshops	325
Unincorporated San Diego County Pop-up Events	100
Community Needs Survey	2,980
Total	3,450

Prioritizing Equity and Communities of Concern

Community Power is committed to making equity central to all outreach and investment planning. The Community Power Plan (CPP), adopted by the Board of Directors in 2023, was the foundation for many of the investments reflected in this Capital Investment Plan (CIP). As part of the CPP development process, Community Power prioritized meaningful and inclusive engagement with Communities of Concern to guide program and project priorities. This commitment continues to shape our work today.

To ensure authentic community participation, Community Power partnered with and compensated community-based organizations that work directly with underserved communities. The following engagement principles guided the development of the CPP and continue to inform our broader program and investment strategies.

Minimizing obstacles

Community Power designed outreach activities that met people in their communities, building trust by minimizing barriers such as time commitments, technology access and transportation. Flexibility and adaptability remained priorities throughout the process.

Valuing community input

Local and lived experiences were central focuses during the engagement process. Community Power gathered insights on community goals, priorities and challenges to inform future program design and investment decisions.

Building partnerships

Community Power built strong relationships with community-based organizations across the region. These partnerships provided critical input on outreach strategies and deepened our understanding of the communities we serve.

Recognizing real-world challenges

Community Power recognized that urgent issues like rising utility bill costs, economic pressures and service insecurity often take precedence for households. Engagement efforts were designed to respect and reflect these lived realities while still advancing clean energy and sustainability goals.

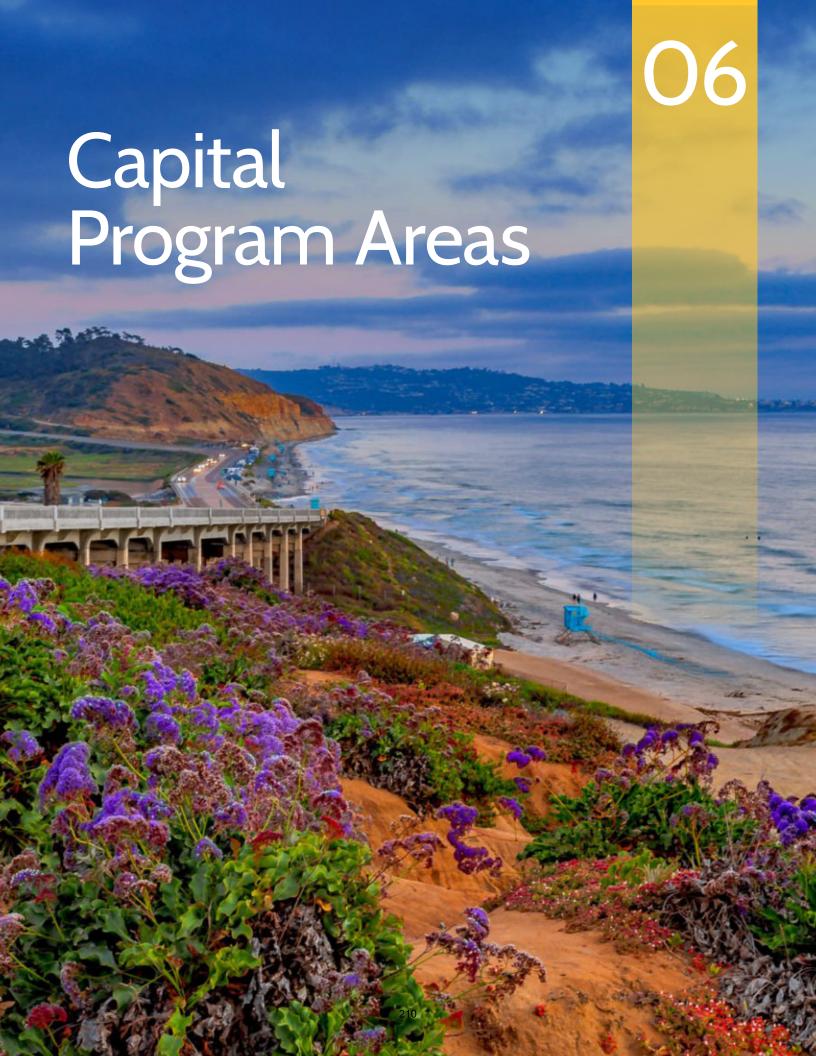
Promoting accessibility

Outreach materials and activities were developed with accessibility in mind, including considerations for language, technology access, physical ability and subject matter familiarity. Materials were presented using clear, non-technical language.

Upholding language access

Community Power employed a language justice approach to ensure participants could fully engage in the languages they felt most comfortable using. Multilingual engagement and culturally relevant materials fostered greater inclusivity and trust throughout the planning process.





Capital Program Areas

Program Type Overview

The Community Power Plan (CPP) is the foundational document that informs the Capital Program areas. Utilizing the input received during the CPP community needs assessment and the other efforts conducted during the CPP development, strategies were developed for short-term, medium-term and long-term programs.

Given the significant influence that timing of available funding imposes on program delivery, this five-year Plan approached programs using the following phases.

- Short-term (FY 2023-2024 FY 2024-2025): Program types that can be launched quickly with available funding and/or with a manageable amount of Community Power's revenues to address immediate needs identified in the community needs assessment.
- Medium-term (FY 2025–2026 FY 2026–2027) (current): Community Power has transitioned from the short-term program strategy to the medium-term program strategy as additional projects are funded by one-time operating contributions. An overarching tenet of the medium-term program strategy is the flexible load program — a strategy that can be implemented across a range of programs. The strategy outlines target end-use technologies, key points of integration with existing/planned programs and a proposed software architecture to drive device dispatch and control as well as a framework to guide dispatch and device operations.

The strategy is being designed to optimize customer energy usage around time-of-use rate schedules and customer preferences, directly reducing participants' bills while decreasing major Community Power cost drivers, such as energy and resource adequacy procurement, which directly benefits all ratepayers. The strategy also incorporates advanced analytics to predict peak demand periods, allowing for proactive adjustments to energy consumption that further enhance cost savings for ratepayers. Additionally, by promoting the adoption of renewable energy sources, the strategy supports Community Power's broader goals of sustainability and reduced environmental impact.

· Long-term (FY 2027-2028+): Program types that require more complex program design and development, are dependent on Community Power being more established and/or that support emerging clean energy technologies.

Short-Term Program Types (FY 2023–2024 – FY 2024–2025)

- **Energy Awareness and Education**
- 2. Application Assistance
- 3. Disadvantaged Communities Green Tariff
- 4. Pilot Programs
- Grant Programs

Medium-Term Program Types FY 2025-2026 - FY 2026-2027)

- 1. Building Electrification: Heat Pump Technology
- 2. Planning and Studies
- Distributed Energy Resources: **Energy Storage Systems**
- 4. Distributed Energy Resources: Demand Response
- **5.** Energy Efficiency
- **6.** Transportation Electrification: Infrastructure
- 7. Transportation Electrification: Light-Duty Vehicles
- **8.** Transportation Electrification: Medium- and Heavy-Duty Vehicles
- 9. Information Technology: Upgrades

The list of medium-term program types was selected due to their alignment with community and organizational goals. Implementation of programs will largely be determined by funding considerations and other market developments. Given that it is better to develop a small number of welldesigned and impactful programs rather than trying to do everything, Community Power wants to be deliberate about which of the recommended program types to focus on, for which market sectors/customer types and in which order.

Program Type 1. Energy Awareness and Education

TABLE 2. ENERGY AWARENESS AND EDUCATION PROJECTS

Project	Scope of Work	Carry Forward	FY26
Civic Spark Fellows	Partnership with San Diego State University	-	\$40,000
	professor-led student cohorts to expand outreach for		
	key Community Power initiatives and programs while		
	providing workforce development opportunities		
Equitable Building	The Equitable Building Decarbonization Direct Install	-	\$466,667
Decarbonization	Program ("EBD Program") is a statewide initiative		
	that offers no-cost installation of electric appliances,		
	energy efficiency measures, basic health and safety		
	improvements and electrical panel upgrades.		
Total		-	\$506,667

Description

Community Power offers energy awareness and education programs for its customers and workforce. Energy and bill education programs teach customers about how to understand their energy bill, how usage impacts costs, and the benefits of clean energy. Beyond energy bills and usage, educational efforts can provide customers with unbiased information about how to participate in the clean energy transition. For example, Community Power offers lists of qualified and vetted contractors and equipment installers from which to choose.

An educated workforce will be needed to support the development, installation and operation of many electrification technologies, especially with respect to building electrification programs. Providing education to contractors can ensure that workers are informed and knowledgeable about the latest electrification technology to support broad adoption and acceptance.

Benefits

As a significant barrier cited in the CPP community engagement process, building awareness about energy can support behavioral changes to promote energy efficiency and lower bills - a key issue for many community members. Education can also lead to increased participation in ratebased programs (e.g., California Alternate Rates for Energy) that benefit Communities of Concern.

Many clean energy technologies face increased barriers to adoption due to the lack of qualified contractors and equipment installers or lack of awareness in Communities of Concern. Education and awareness programs for contractors can help overcome these barriers and benefit customers.

Design Considerations

During the CPP community engagement process, many expressed a lack of awareness about energy and the need for education, especially among Communities of Concern. Because many communities have a high level of distrust for government and utilities, partnering with trusted community-based organizations on education programs can help increase access, build trust and deepen partnerships.

Education programs can also be paired with other program offerings to maximize awareness and participation.

Community Power may also consider contractor training opportunities to support greater adoption of clean energy technologies, such as electric heat pumps, as contractor participation will be required to bring newer technologies to a broader market at scale.

Lastly, Community Power should consider partnering with water agencies/authorities that offer water education programs to complement these programs and explain the water-energy nexus.

Program Type 2. Application Assistance

TABLE 3. APPLICATION ASSISTANCE PROJECTS

Project	Scope of Work	Carry Forward	FY26
Commercial Application Assistance Program	Community Power's Commercial Application Assistance Program is an initiative that aims to support commercial customers in identifying ideal energy solutions and programs that can help meet the customer's needs and goals. The program aims to help customers become aware of and apply for publicly available and funded energy programs and, if needed, to provide project management and grant support.	-	\$250,000
Total		_	\$250,000

Description

There are many existing energy programs that Community Power customers may have access to through other local, state and federal agencies (i.e., third-party programs). SDG&E alone offers more than 80 energy efficiency and demand response programs, though not all of them are relevant for each customer. The number of programs and the complexity of application processes can create barriers to access for many customers, including under-resourced community members and small businesses/organizations that serve Communities of Concern; therefore, an opportunity exists for Community Power to assist with application processes for third-party programs.

Benefits

Funds are available from a variety of third-party programs that can currently help meet community needs. Since a lack of participation in existing programs was noted in the community needs survey, Community Power can help customers access the benefits of third-party programs to boost the success of the programs and help bring additional resources for a variety of energy measures to the San Diego region.

Design Considerations

Because there are many existing programs that each have their own intricacies, Community Power may consider working with partners to select a targeted list of program types to provide application assistance for, rather than trying to support all application types. Recommendations for program types to provide application assistance include energy efficiency, heat pump technology, transportation electrification infrastructure for income-qualified individuals and Communities of Concern and onsite solar and energy storage for Communities of Concern. Examples of programs that align well with community needs could include SDG&E's energy efficiency programs, like the Residential Energy Solutions program and Energy Savings Assistance program, the TECH Clean California program, the Self-Generation Incentive Program and the Disadvantaged Communities Single-family Affordable Solar Homes (DAC-SASH) program.

Application assistance can be a strategy to build partnerships with trusted community-based organizations and partners or other public agencies. While application assistance may be offered to all, outreach can be conducted in partnership with community-based organizations to target support for Communities of Concern.

Program Type 3. Disadvantaged Communities Green Tariff

TABLE 4. DISADVANTAGED COMMUNITIES GREEN TARIFF PROJECTS

Project	Scope of Work	Carry Forward	FY26
CPUC Green Tariff	To bring the benefits from local solar projects to those who may not be able to install solar on their roofs and offer a 20% bill discount to eligible residential customers in state-defined disadvantaged communities	\$166,747	\$310,383
Total		\$166,747*	\$310,383

^{*\$535,800} is the total carry forward amount through the agency but is subject to a true-up process with the CPUC in which the agency expects \$166,747 in a resulting carry-forward amount.

Description

The Disadvantaged Communities Green Tariff (DAC-GT) program provides the benefits of solar and provides a bill discount to income-qualified residential customers in underresourced communities who have barriers to installing or are unable to install solar on their roof. Eligible communities are determined by the California Public Utilities Commission (CPUC)using the CalEnviroScreen tool, which identifies "disadvantaged communities" as census tracts that are disproportionately burdened by and vulnerable to multiple sources of pollution.

Benefits

The DAC-GT program is intended to further promote the installation of renewable energy generation among disadvantaged communities with a particular focus on lowincome residents. The CPUC created the program to include a 20% bill discount so that low-income customers can affordably access local renewable energy resources that they would not otherwise be able to access.

Design Considerations

As a CPUC program, many of the design elements of DAC-GT are already established and prescribed. Customers will be automatically enrolled in the program; therefore, some participants may be unaware of the program, its benefits or their enrollment status. Additionally, participants may be skeptical and view the combination of benefits and bill savings as "too good to be true." Partnering with trusted, local community-based organizations can help increase program awareness. Community Power has also named the program Solar Advantage in customer-facing materials and will work to remove jargon so that participants understand the program and do not unsubscribe.

Program Type 4. Pilot Programs

TABLE 5. PILOT PROGRAMS PROJECTS

Project	Scope of Work	Carry Forward	FY26
Customer Pilot Programs	To test out program concepts and support implementation of high-impact projects that Community Power may be able to scale with more funding	\$1,652,690	-
Clean Energy Asset Feasibility Study	Community Power is undertaking a solar and storage feasibility study, which will assess the technical, economic and environmental viability of integrating solar generation and/or energy storage into Community Power's service territory. The project will involve data collection and review, technical analysis of potential solar locations and grid interconnection, economic modeling to assess costs and savings, environmental impact assessment and development of a preliminary implementation plan with project size, timeline and cost estimates. The final deliverables will include reports on technical feasibility, economic analysis, environmental impact and a preliminary implementation plan.	\$200,300	
Total		\$1,852,990	-

Description

Pilot programs are small-scale, short-duration projects (6–18 months) that can provide Community Power and stakeholders data on program design, technology acceptance and other information helpful for broader program delivery. Pilot programs support Community Power staff's ability to properly and efficiently design and implement programs. Additionally, pilot programs can cover all customer segments (e.g., commercial residential) and a variety of technologies or activities (e.g., managed charging for electric vehicles, energy efficiency).

Benefits

Pilot programs broadly support the Program Department goal to create a 150 MW Virtual Power Plant (VPP). The VPP enables Community Power staff to reduce peak load consumption via aggregated management of enrolled behind-the-meter customer devices. Reducing peak load consumption benefits all ratepayers by: 1) reducing demand when per-unit energy costs are the highest; and 2) reducing agency Resource Adequacy obligations and associated costs.

Pilot programs can provide a range of additional benefits, such as:

· Testing local acceptance of incentive projects that have successfully been implemented in other parts of the state or country

- · Filling in gaps and facilitating bringing state funding into the region
- Demonstrating the efficacy of emerging technologies and/ or business models in the real world
- · Evaluating innovative incentive delivery methods and mechanisms
- Providing data on real-world scenarios, local project costs, barriers and opportunities
- Reducing risks of large-scale broad program delivery by providing lessons learned at a smaller scale

Design Considerations

Pilot programs can give Community Power the opportunity to flexibly invest defined amounts of internal resources to quickly learn about elements of a particular program before seeking significantly more investments for scaled programs. When developing pilot programs, Community Power will integrate opportunities to capture lessons learned throughout the process, whether that be through data capture, performance evaluation or ongoing stakeholder dialogue. Pilot programs can also provide the opportunity for Community Power to partner with, support and learn from community-based organizations. Community Power will work with communitybased organizations, where feasible, to design and implement pilot programs.

Program Type 5. Grant Programs

TABLE 6. GRANT PROGRAMS PROJECTS

Project	Scope of Work	Carry Forward	FY26
Member Agency Grants	Grant programs to support both community organizations and its member agencies. Grants focus on addressing the key priorities heard during the community engagement process and provide member agency grants to support regional climate action goals.	\$6,667	-
Community Grants	To implement innovative program ideas from community-based organizations or specific clean energy projects that help Community Power's member agencies achieve their climate action goals	\$662,421	\$837,579
Total		\$669,088	\$837,579

Description

Grant programs allow Community Power to provide financial assistance to community-based organizations and member agencies to implement clean energy projects or innovative program ideas. Grant programs require applicants to submit a proposal outlining their project or initiative and how it will meet the goals and objectives of the program.

Benefits

Grant programs can provide numerous benefits for Community Power and the communities it serves, such as:

- · Providing a source of funding to community-based organizations and member agencies that may not have the resources to implement innovative projects.
- Encouraging and supporting creative ideas that may not be possible through traditional funding sources.
- Creating strong trust and relationship-building opportunities among Community Power, its member agencies and community organizations.
- · Increasing visibility of Community Power within the communities it serves.
- Helping to achieve Community Power and member agency sustainability goals by aligning grant programs with initiatives such as promoting clean energy, reducing carbon emissions and supporting local economic development.

· Exploring opportunities to develop the flex load strategy in areas of the community that may not otherwise have the opportunity, which can optimize customer energy usage around time-of-use rate schedules, and to directly reduce participant bills while decreasing costs for energy and resource adequacy procurement, which directly benefits all ratepayers.

Design Considerations

Community Power should consider creating grant programs to support both community organizations and its member agencies. Community Power could provide community grants focused on addressing the key priorities identified during the community engagement process for this Plan and provide member agency grants to support regional climate action goals. Community Power should consider partnering with trusted and proven regional organizations to streamline grant program development and implementation while easing administrative burden on staff.

Program Type 6. Building Electrification: Heat Pump Technology

TABLE 7. BUILDING ELECTRIFICATION HEAT PUMP TECHNOLOGY PROJECTS

Project	Scope of Work	Carry Forward	FY26
N/A	N/A	_	-
Total		-	-

Description

Heat pump technology programs encourage the installation of electric heat pumps for space heating, cooling and water heating in buildings.

Benefits

Conversion to heat pump technology supports buildings that are more efficient, cleaner, healthier and safer. Heat pump technology is more efficient than its natural gas counterparts and avoids the onsite use of natural gas, which is responsible for most building emissions and can cause negative health impacts due to indoor air pollution. Unlike traditional heating systems, heat pump technology can provide space heating and cooling from the same system, which can lower costs compared with installing separate systems. Heat pump technology can especially benefit older homes because it can introduce incredibly efficient cooling capacity that has not typically existed previously in the home — a critical service for many residents in a changing and warmer climate. Switching to a heat pump water heater removes an additional source of pollution especially when it is located inside the home and can efficiently heat water.

To enable the installation of heat pump technology, electrical panel upgrades may be needed for buildings that have outdated or constrained electrical panels. While panel upgrades do not have direct environmental or health benefits, outdated panels are a barrier to electrification for many projects, as their cost can significantly increase project costs that may not be covered in other incentive programs.

Design Considerations

Community Power should consider supporting electrical panel upgrades in addition to the installation of heat pump technology. Community Power, like other CCAs, should also consider smart control requirements to enable demand response functionality because heat pump technology can be controlled to optimize its usage to save energy and lower costs.

To support income-qualified customers and owners of multi-family affordable housing, who may have challenges accessing up-front capital and have limited capacity to research and implement projects, Community Power should consider direct installation programs. These customers often have limited cash flow and complex ownership structures that make it difficult to access capital through loans, which can result in maintenance backlogs that would need to be addressed before energy retrofits can be undertaken. As a result, they may not implement clean energy programs without significant financial support and technical assistance. Community Power should consider that residents of multifamily affordable housing may be overburdened by rent and utility costs and may be displaced if housing costs increase because of electrification.

Given the vulnerability of the occupants, programs should also include protections for renters. This may require Community Power to work closely with local housing departments or other agencies to ensure that Communities of Concern are supported in the transition.

One common barrier during program design is the lack of skilled labor and equipment being carried by contractors. When older systems fail and need to be replaced, residential building owners generally cannot wait for contractors to order new equipment. Direct installation programs targeting efficiency and weatherization have traditionally leveraged entry-level skills, whereas the installation of heat pump technology requires more skilled labor, including electricians, heating and ventilation technicians, and plumbers. Community Power should consider providing contractor training and mid-stream incentives to enable contractors to know how to install heat pumps correctly, have heat pumps on hand and offer competitive pricing.

Program Type 7. Planning & Studies

TABLE 8. PLANNING & STUDIES PROJECTS

Project	Scope of Work	Carry Forward	FY26
Building and Housing Stock Analysis	Develop resources on existing building stock to inform program design	\$52,000	-
Local Development Feasibility Study	Developing local infill planning, including receiving feedback and guidance from Community Power Board, Community Advisory Committee and other stakeholders to confirm needs and goals, visiting with member agencies to evaluate potential sites and opportunities, and reviewing scope and schedule	\$37,500	\$37,500
Building and Housing Stock Analysis	Develop resources on existing building stock to inform program design	\$52,000	-
Program Evaluation	TBD	\$250,000	
Total		\$52,000	\$287,500

Description

Program Department Planning and Studies are research activities typically resulting in a report or study that will inform future Program Department activity.

Benefits

Program Planning and Studies can provide a range of benefits,

- · Determining feasibility of future pilots and programs that could promote the agency's flexible load strategy and goals to reduce peak load consumption. Reducing peak load consumption benefits all ratepayers by: 1) reducing demand when per unit energy costs are the highest and 2) reducing agency Resource Adequacy obligations and associated costs.
- Enabling Community Power staff to reduce peak load consumption via aggregated management of enrolled behind-the-meter customer battery systems.
- · Providing valuable data sets used to evaluate or design future pilots and programs.
- Evaluating Program Department pilots and projects.
- · Generally informing future Program Department activities.

Design Considerations

Program Department planning and studies should be done in consultation and collaboration with industry, community-based organizations, academia and other public agencies, as appropriate.

Program Type 8. Distributed Energy Resources: Energy Storage Systems

TABLE 9. DISTRIBUTED ENERGY RESOURCES: ENERGY STORAGE SYSTEMS PROJECTS

Project	Scope of Work	Carry Forward	FY26
Residential Solar Battery Savings Program	Community Power's Residential Solar Battery Savings Program is designed to help single-family homeowners in Community Power's service territory invest in clean energy and support the grid by installing solar and battery storage in their homes or complement an existing solar system with a new battery system. The program provides two financial incentives for participating customers: an upfront incentive to minimize the initial cost of the battery system and a performance incentive for a daily discharge of the battery (during a specified dispatch window during on-peak periods) to maximize benefits for the customer and the grid.	\$2,697,382	\$18,750,000
Total		\$2,697,382	\$18,750,000

Description

Energy storage system programs support the installation of onsite energy storage systems to be paired with renewable energy resources (e.g., onsite solar).

Benefits

While the amount of solar-generated electricity available on the grid has increased dramatically in California, it is not being sufficiently captured during times of high production so that it can be used to meet needs when renewable energy resources are not available. This causes an imbalance — too much energy on the grid at some times and not enough at others, requiring fossil fuel-based sources of electricity to make up the difference. Increasing the amount of energy storage that is paired with renewable energy generation helps make the electric grid cleaner.

Energy storage can help to increase the resilience of the grid by balancing supply and demand and can also be used for backup power during outages or emergencies. This can be especially beneficial for critical facilities, community resilience hubs and customers who need to have power permanently available for medical devices, safety or emergency response.

The Solar Battery Savings program enables Community Power staff to reduce peak load consumption via aggregated management of enrolled behind-the-meter customer battery systems. Reducing peak load consumption benefits all ratepayers by: 1) reducing demand when energy costs are the highest; and 2) reducing agency Resource Adequacy obligations and associated costs.

Design Considerations

Multiple program pathways exist to support energy storage market development, depending on the level of resources available. For example, Community Power could work with local governments or others to implement energy storage systems at scale in critical facilities or community resilience hubs in ways that enable bulk purchasing of batteries and controls, including microgrids. Community Power may also provide technical support to customers to enable comprehensive energy retrofits, including energy storage systems.

Program Type 9. Distributed Energy Resources: Demand Response

TABLE 10. DISTRIBUTED ENERGY RESOURCES: DEMAND RESPONSE PROJECTS

Project	Scope of Work	Carry Forward	FY26
Distributed Energy	Central to Community Power's Flexible Load	\$158,321	\$300,000
Resources Management	Strategy is the selection and implementation of a		
Systems Software	Distributed Energy Resource Management System		
Platform	(DERMS). A DERMS is a software platform that		
	incorporates various data points, such as weather,		
	market/price data and customer preferences,		
	to optimize the operation of distributed energy		
	resources (DERs) in support of various grid services.		
	Once operational, this system will allow Community		
	Power to help customers reduce usage during high-		
	cost on-peak periods, while managing portfolio-wide		
	power procurement and resource adequacy costs		
	and risk.		
Total		\$158,321	\$300,000

Description

Demand response programs incentivize customers to reduce their electricity use when energy demand on the grid is at its peak. These types of programs can encourage behavioral changes to shift or reduce usage or can leverage smart devices to automatically take the desired action.

Benefits

Decarbonizing buildings requires more than just reducing the amount of energy used; it also requires changing the time when energy is used to maximize the use of renewable energy and minimize peak demand when the grid requires larger fossil-fuel generation to come online. Demand response technologies enable this shift in energy use timing, helping customers control costs and making the best use of renewable energy when it is available. Additionally, demand response technologies can enable buildings to help increase overall grid resiliency by helping operators shift loads during peak times, reducing the likelihood of power outages during extreme heat events.

The DERMS platform enables Community Power staff to reduce peak load consumption via aggregated management of enrolled customer devices. Reducing peak load consumption benefits all ratepayers by: 1) reducing demand when per unit energy costs are the highest; and 2) reducing agency Resource Adequacy obligations and associated costs.

Design Considerations

A gap exists around support for installation of smart controls on other systems, such as heat pump technology, electric vehicle chargers and energy storage systems. Many CCAs require or encourage the equipment they incentivize to have demand response capabilities. Community Power should require that incentivized equipment be grid interactive. By establishing technology requirements across other programs, Community Power could provide the most future-proofing and flexibility to enable customers to participate in demand response programs.

Program Type 10. Energy Efficiency

TABLE 11. ENERGY EFFICIENCY PROJECTS

Project	Scope of Work	Carry Forward	FY26
Regional Energy Network	The San Diego Regional Energy Network (SDREN) is an initiative of Community Power, in partnership with the County of San Diego, to offer a portfolio of energy efficiency programs to residents, businesses and public agencies throughout San Diego County. The 10 SDREN programs will be managed by Community Power staff and all activities will be cost recoverable through CPUC funds. SDREN is approved by the CPUC. Program implementation for Phase 1 and Phase 2 is set to begin in Q4 2025.	\$357,250	\$31,845,256
CDFA Healthy Refrigeration Grant	The program funds energy efficient refrigeration units in corner stores, small businesses and food donation programs in low-income or low-access areas in the state to stock California-grown fresh produce, nuts, dairy, meat, eggs and minimally processed and culturally appropriate foods. The purpose of the program is to improve access to healthy foods in underserved communities, while promoting California-grown agriculture.	\$532,499	-
Total		\$889,749	\$31,845,256

Description

Energy efficiency programs promote a wide range of strategies that can reduce the amount of energy buildings use.

Benefits

Energy efficiency is a critical decarbonization strategy with multiple co-benefits: reduced energy demand, reduced customer energy bills, increased indoor air quality and increased indoor comfort. Weatherization efforts, including insulation, improved windows and doors and cool roofs can help keep indoor environments safe and comfortable longer when power outages occur — and less energy demand means customers can install smaller renewable energy generating systems (e.g., onsite solar), which leads to lower installation costs.

Design Considerations

With SDG&E offering a multi-year energy efficiency program portfolio, Community Power should develop complementary programs that fill gaps and avoid duplication. Community Power should consider opportunities to provide free or low-cost energy efficiency upgrades for income-qualified customers and residents in Communities of Concern to be responsive to community priorities. Energy efficiency programs for multifamily buildings can help fill a gap, as these buildings often have complex ownership structures and other barriers that make it difficult to access traditional programs; this is especially notable for affordable multi-family housing.

Community Power should consider that residents of inefficient buildings may be overburdened by rent and utility costs and may end up displaced if housing costs increase because of energy efficiency upgrades.

Given the vulnerability of the occupants and the importance of keeping people housed, energy efficiency programs should include protections for renters. This may require Community Power to work closely with local housing departments or other agencies. While challenging, these considerations can help support Communities of Concern.

Program Type 11. Transportation Electrification: Infrastructure

TABLE 12. TRANSPORTATION ELECTRIFICATION: INFRASTRUCTURE PROJECTS

Project	Scope of Work	Carry Forward	FY26
N/A	N/A	_	-
Total		-	-

Description

Transportation electrification infrastructure programs support the deployment of electric vehicle (EV) charging stations and related technologies (e.g., Vehicle-to-Grid) to enable light-, medium- and heavy-duty vehicle transportation electrification.

Benefits

Expansion of the EV charging network is needed to support customers switching from fossil fuel-powered cars, which are associated with both carbon emissions and local air pollution. Increasing access to charging infrastructure can increase customer confidence to make the transition to EVs, especially for residents of multi-family buildings and in rural areas, as noted during the community needs assessment.

Design Considerations

Community Power should focus transportation electrification infrastructure programs on locations where the private sector is not currently prioritizing development (i.e., geographical areas or market sectors). Gaps in access to EV charging infrastructure could be filled through strategies such as direct installation of equipment for multi-family buildings located in Communities of Concern. In some cases, Community Power should provide additional funding to residents to stack on existing funding from incentive programs for all applicants or some sectors (e.g., Communities of Concern). In light of significant funding becoming available for public charging infrastructure, Community Power should partner with member agencies to expand public access to charging infrastructure in locations underserved by public charging and/or that could serve residents of multi-family buildings. Creative approaches for deploying charging infrastructure on member agencyowned land could create benefits (e.g., lower charging costs and more charging locations) relative to charging infrastructure on commercial properties. Community Power also should consider offering technical assistance and incentives for commercial charging infrastructure to support the transition of mediumand heavy-duty vehicles to electric.

Funding Considerations

Significant focus has been placed on transportation electrification by state and federal agencies, creating many opportunities for Community Power to seek external infrastructure incentive programs. The California Public Utilities Commission's Locally Invested Transportation Equity funding offers a chance to test innovative program designs with a focus on community partnerships. The California Energy Commission is expected to provide additional opportunities for creative incentive design and delivery through future Vehicle-to-Grid funding and the Electric Program Investment Charge program.

Community Power should continue to collaborate with the San Diego Association of Governments and San Diego County Air Pollution Control District through the regional Accelerate to Zero Emissions Collaboration and in their efforts to incentivize charging infrastructure. Lastly, Community Power can support member agencies in their efforts to seek funding through opportunities such as the Clean Mobility Options program.

Program Type 12. Transportation Electrification: Light-Duty Vehicles

TABLE 13. TRANSPORTATION ELECTRIFICATION: LIGHT-DUTY VEHICLES PROJECTS

Project	Scope of Work	Carry Forward	FY26
N/A	N/A	_	-
Total		-	-

Description

Light-duty vehicle electrification programs support customers in the transition from fossil fuel-powered cars to EVs. Examples of light-duty vehicles include sedans, sport utility vehicles and pickup trucks.

Benefits

The switch from fossil-fuel powered cars toward EVs has the dual benefit of locally reducing carbon emissions and air pollution. Compared to light-duty fossil-fuel cars, lightduty EVs are easier to maintain and have an overall lower lifetime cost of operation. With the right rate structures and technology, EVs also present the opportunity to serve as energy storage systems and help with grid resiliency.

Design Considerations

Community Power should prioritize expanding access to EVs for income-qualified customers, such as offering incentives for used EVs to increase affordability. Previously leased EVs can be good options for used EVs if they are in good condition. Community Power should consider partnering with car dealerships to offer point-of-sale incentives on used EVs. Community Power should avoid providing after-sale rebates because these require customers to have the upfront capital and ability to wait for a rebate. It should be noted that pointof-sale incentives can be more challenging to implement and Community Power will need to do additional work to support this type of delivery mechanism.

In addition, Community Power should focus on ways to reduce other barriers to EV adoption, such as providing favorable financing options. EV programs can be paired with support for charging infrastructure in Communities of Concern. Lastly, Community Power should consider designing programs that reduce other barriers to EV adoption by providing point-ofsale incentives or other types of up-front assistance instead of after-sale rebates. Community Power should also consider how best to fill in the gap of financing options for incomequalified customers.

Funding Considerations

Internal revenues may be required to create incentives to supplement available State funding for EV adoption (i.e., Clean Vehicle Rebate Project and Clean Vehicle Assistance Program) or the future regional vehicle-scrap program (i.e., Clean Cars 4 All). As with transportation electrification infrastructure programs, the regional Accelerate to Zero Emissions Collaboration initiative will be involved in all aspects of bringing funding to the region — both for Community Power to potentially access for self-administered programs and for its customers to access via third-party programs.

Program Type 13. Transportation Electrification: Medium- and Heavy-Duty Vehicles

TABLE 14. TRANSPORTATION ELECTRIFICATION: MEDIUM- AND HEAVY-DUTY VEHICLES PROIECTS

Project	Scope of Work	Carry Forward	FY26
N/A	N/A	-	-
Total		-	-

Description

Medium- and heavy-duty vehicle electrification programs encourage the transition away from fossil fuel-powered commercial vehicles and toward electric alternatives. Examples of medium- and heavy-duty vehicles include delivery and shuttle vans (Class 2-6), diesel shipping trucks (Class 7–8), school and transit buses, transport refrigeration trucks, drayage trucks and forklifts.

Benefits

The electrification of medium- and heavy-duty vehicles reduces carbon emissions and local air pollution. Air pollution tends to be high around ports and logistics corridors, where heavy commercial vehicles regularly travel and often spend time idling. These places are also where large portions of Communities of Concern can be found, leading to disproportionate impacts on the health of these communities. Transitioning these vehicles has the added benefit of reducing noise pollution.

Design Considerations

Community Power should analyze which fleets of medium- and heavy-duty vehicles have the highest impact on Communities of Concern. The Port of San Diego is a clear partner given its location, business operations and recent policy direction in the Maritime Clean Air Strategy. Working with transit agencies, school districts and public agencies, SDCP can support the transition of fleets that serve the public to create the co-benefit of exposing more of the public to electric transportation.

Community Power should also create medium- and heavyduty vehicle electrification programs targeting businesses that operate their fleets primarily in Communities of Concern. While some medium-duty EV types are now cost competitive, others are far more expensive and will require more support and resources to transition. In addition, because medium- and heavy-duty vehicles vary in the distance they can travel on each charge, Community Power should work with commercial customers to determine which vehicle options would work well based on their specific need, travel patterns and markets served. Community Power also needs to consider the need for appropriate charging infrastructure to support the conversion.

Funding Considerations

Community Power should consider working with customers to implement innovative business models that lower the cost of EVs. It should also consider leveraging internal funding to capture new funding opportunities and maximize impact.

Program Type 14. Information Technology: Upgrades

TABLE 15. INFORMATION TECHNOLOGY UPGRADES PROJECTS

Project	Scope of Work	Carry Forward	FY26
Customer Relationship Management Setup	The Customer Relationship Management project will establish a centralized system to enhance service delivery and community engagement, with a focus on energy management and customer support. This initiative, excluding confidential security work, will streamline operations across Community Power's service area and reduce long-term costs.	\$750,000	-
Contact Center Enhancements	Community Power is exploring initiatives to enhance customer service operations to improve services responsiveness and increase customer satisfaction.	\$200,000	-
Enterprise Data Platform	Community Power is set to establish a centralized data infrastructure to improve data access and analytics for staff, aiming to enhance control and reduce costs. The project encompasses capital investment, staff training, data migration and cybersecurity enhancements. Deliverables include a functional data platform, trained personnel and detailed progress reports. The initiative will proceed through planning and implementation phases, excluding confidential security-sensitive details.	\$850,000	-
Amazon Web Services Infrastructure and Security Layer	Community Power will develop an Amazon Web Services Infrastructure and Security Layer to ensure robust, scalable cloud services with enhanced security for customer data. This project will provide a reliable and secure foundation for all Community Power digital services, improving customer trust and service efficiency.	\$250,000	-
Energy Trading Risk Management and Portfolio Analytics Implementation	Community Power has licensed and will be deploying an Energy Trading Risk Management (ETRM) system to help manage its power portfolio and financial and budget processes. This system will support various activities such as recording trades, monitoring positions, assessing value, generating reports, managing risks, processing settlements and integrating with the budget. The system is designed to manage diverse power agreements and contracts, ensuring comprehensive coverage of Community Power's energy dealings.	\$162,843	\$567,157

Enterprise Resource Planning (ERP)	The Enterprise Resource Planning (ERP) project aims to implement an ERP system for Community Power to streamline budgeting, enhance reporting, manage procurement and contracts and improve overall operational efficiency. The major deliverables of the ERP project include a fully implemented and functional ERP system; system documentation including configuration details, user manuals and training materials; trained staff capable of effectively using the ERP system; and a post-implementation review report.	\$83,333	\$916,667
Total		\$2,296,177	\$1,483,823

Description

Information Technology Upgrades programs are designed to modernize and enhance the digital infrastructure of organizations, improving efficiency, security and the ability to adapt to new technological advancements.

Benefits

The advancement of Information Technology (IT) Upgrades significantly enhances operational efficiency and cybersecurity. In areas with high concentrations of technological activity, outdated systems can lead to increased vulnerabilities and inefficiencies. Upgrading these systems not only fortifies the security and enhances the performance of various sectors, but also promotes a more dependable and sophisticated technological framework. Moreover, the transition to modern IT infrastructure aids in minimizing electronic waste through the adoption of energy-efficient and long-lasting equipment, contributing to environmental sustainability and public health benefits.

Design Considerations

Our organization is committed to creating a world-class IT and data ecosystem with the mission of harnessing the power of data to drive sustainable energy solutions that benefit local communities while making a global impact. By ensuring the integrity, accessibility and security of our data, we empower decision-makers with actionable insights. Projects are selected to construct and manage robust data repositories, interactive dashboards and comprehensive visualizations to monitor objective key results.

Community Power receives a vast amount of data from its vendors and partners, including SDG&E and Calpine (our back-office provider). To best utilize this data to effectively run our operations, make data-driven decisions and optimize the customer experience, the Information Technology: Upgrades program type develops and expands the data analytics platform comprising a set of analytical tools built on a cloudbased platform that helps with customer management, load forecasting, rate design, program marketing and accounting.



Funding Guide

San Diego Community Power can fund programs in two main ways — through its own internal revenues or by applying for external funding. Funding programs with internal revenues would provide the greatest amount of flexibility for Community Power to design programs in ways that specifically meet community needs; however, as a newer organization, Community Power must also balance building a strong financial foundation, meeting reserve targets, customer affordability and other organizational priorities. In the short term, the amount of revenue that Community Power can direct to customers in the form of programs will be limited, but this amount is expected to grow over time.

Furthermore, internal funding allows maximum flexibility in the planning phase of designing programs and projects, whereby the agency can focus on designing based on community and agency needs rather than the requirements of a funding agency. The planning phase of a program or project also requires less funding when compared with implementation or design and construction.

To maximize impact while building reserve funds, Community Power will need to pursue external funding from sources such as state and federal agencies. External funding takes more work to apply for and administer and is less flexible than internal revenues, but the total dollar amounts from external sources can be much higher. The main sources of external funding include the California Public Utilities Commission and California Energy Commission as well as other state and federal agencies.

Internal versus External Funding

When considering funding for administering programs, Community Power must evaluate using internal revenues and applying for external funding, which both have impacts that need to be thoroughly considered. Investing internal revenues into programs would be done over other potential organizational priorities. That said, investing revenues back into the community through programs provides arguably the most equitable distribution of revenues to customers and undoubtedly provides the highest level of certainty and flexibility for Community Power to administer programs.

External funding typically uses a competitive bid process, requiring additional resources for application writing and grant tracking and creating risk for long-term program planning due to the uncertainty of grant awards.

Additionally, many of the potentially cumbersome administrative elements of external funding (e.g., reporting, program design and timelines) can be less burdensome when funding programs with internal revenues. This flexibility is particularly important when considering Community Power's equity commitments because external funding sources may have requirements that can make it difficult to effectively deliver programs to customers in Communities of Concern.

Research across the CCA landscape shows a variety of different approaches when considering program funding sources. Some CCAs aggressively spend their own revenues on programs with little use of outside funds due to the administrative burden and complexity associated with external funds, among other reasons. Others spend a relatively limited amount of revenues on programs, instead relying almost solely on external funding sources. As a young organization, Community Power should prioritize finding a middle ground between these two options and adjust its strategy as the organization matures.

In the short term, Community Power has committed to building financial reserves of \$575.8 million (180-days cash on hand based on its FY 2024-2025 amended budget), because one of the organization's strategic goals is to obtain a credit rating. This attention to building a strong financial position is important to enable Community Power to effectively meet the long-term needs of the community. As reserve targets are met, the ability of Community Power to invest revenues back into communities through programs will increase.

Meeting financial reserve targets will give Community Power the ability to offer programs with larger budgets and provide financial incentives using internal revenues. Additionally, internal revenues can support increased external funding; for example, by developing pilot programs that can be expanded with external resources, or by supplementing external funding with additional funds to support full project needs. Doing so can make Community Power's internal dollars go farther.

External Sources

Community Power can apply for funds from a variety of sources to supplement its own investments in programs. These external sources vary in the level of funding resources they provide, the complexity of the application process and the flexibility they offer in how funds are distributed.

New funding opportunities will become available as the budget is allocated through state legislation. Community Power will monitor funding opportunities that are a good fit to pursue, based on community and organizational priorities, and apply for them in the short term, while understanding that funding may not become available until beyond the short term. For some external funding opportunities, Community Power may be able to partner with other regional agencies and partners to share the administrative burden.

Community Power should explore the viability of capturing funding from the sources below.

Funding Guide

TABLE 16. COMMUNITY POWER FUNDING GUIDE

Funding Source	Description
Community Power Operating Transfers	Through the annual budget process, the Community Power Board may approve an appropriation of funds to be out of the operating budget and transferred into the CIP. These funds will remain in a Community Power continuing fund to be used across multiple fiscal years, given that CIP projects generally last longer than one year.
CPUC Apply to Administer (ATA)	Community Power could offer energy efficiency programs that do not duplicate SDG&E's current offerings with all programs required to meet strict cost-effectiveness tests. Cost-effectiveness requirements can limit program offerings to residential customers and especially to customers in Communities of Concern.
CPUC DAC-GT	The Disadvantaged Communities Green Tariff (DAC-GT) program enables income-qualified residential customers in DACs who may be unable to install solar panels on their roof to benefit from utility-scale clean energy and receive a 20% bill discount. Funding originates from state Greenhouse Gas (GHG) Auction Proceeds and Public Purpose Program funds.
CPUC Regional Energy Network (REN)	Public Purpose Program Surcharge funds are available for Regional Energy Networks (RENs). The San Diego Regional Energy Network (SDREN) is an initiative of Community Power, in partnership with the County of San Diego, to offer a portfolio of energy efficiency programs to residents, businesses and public agencies throughout San Diego County. The 10 SDREN programs will be managed by Community Power staff and all activities will be cost recoverable through CPUC funds. SDREN is approved by the CPUC. Program implementation for Phase 1 and Phase 2 is set to begin in Q4 2025.
CEC Demand Side Grid Support Program	The Demand Side Grid Support Program is currently under development and will ultimately offer incentives to electricity customers who provide load reduction and back-up power generation to support the state's electric grid during extreme heat events.
Community Power Revenue Bond	Section 3.2.8 of the JPA states that Community Power at the discretion of the Board may issue revenue bonds and other forms of indebtedness. Upon receipt of an investment-grade credit rating, Community Power may have the ability to issue debt, such as a revenue bond, given that Community Power can demonstrate the ability to meet potential debt payment obligations through the credit rating. Under the Community Power Debt Policy, Community Power may issue a revenue bond in the next five years up to approximately \$700 million that will be guided by planning and pilot projects and programs and that will require Board authorization.

CEC Electric Program Investment Charge (EPIC)	The CEC's Electric Program Investment Charge (EPIC) program is a consistent funding opportunity to advance new and innovative clean energy solutions. The EPIC program invests \$130 million annually in a variety of technology research. The CEC has awarded EPIC funding to CCAs for various projects. Most notably, Sonoma Clean Power received a \$5 million EPIC grant in 2018 to support its Advanced Energy Center and associated energy-efficiency programs.
CEC Vehicle-to-Building/ Grid Integration (V2B or V2G)	The CEC is a potential source of funding for Vehicle-to-Building/Grid Integration (V2B or V2G) pilots that will become more valuable to Community Power in the future, from both a customer program perspective and potentially from an energy procurement perspective.
CDFA Healthy Refrigeration Grant	The California Department of Food and Agriculture (CDFA) awarded Community Power funding to support Community Power in providing technical assistance and refrigeration units to stock healthy foods in stores throughout Community Power's service territory.
Equitable Decarbonization Program	The Equitable Building Decarbonization ("EBD") Direct Install ("DI") Program is a Statewide initiative to accelerate large-scale residential building decarbonization efforts in a just and equitable transition for single-family homes, multifamily properties, manufactured housing and public housing in under-resourced communities in Community Focus Areas.
EPA Greenhouse Gas Reduction Fund	The Inflation Reduction Act (IRA) established the federal Environmental Protection Agency's Greenhouse Gas Reduction Fund to provide competitive grants for mobilizing financing and private capital for clean energy projects. The Greenhouse Gas Reduction Fund emphasizes projects that benefit low-income and disadvantaged communities. In 2024, the EPA announced \$27 billion awarded in competitive grants and financial and technical assistance to enable communities to deploy or benefit from zero-emission technologies.
Other Federal Funds	Community Power is eligible to pursue forms of funding not available to for-profit entities such as traditional investor-owned utilities. Several funding opportunities are now clear to Community Power, and more may arise as details continue to emerge during program development.
CEC Demand Side Grid Support Program	The Demand Side Grid Support Program is currently under development and will ultimately offer incentives to electric customers that provide load reduction and back-up power generation to support the State's electrical grid during extreme heat events.

08

Budget Resolution



Budget Resolution Pending



09

Acknowledgments



Acknowledgments

Finance Department

The San Diego Community Power (Community Power) Finance Department works to maintain a fiscally responsible budget in accordance with Community Power Budget Policy. The department ensures sufficient funding to meet procurement needs, sustain operational needs and support sustained growth while delivering clean energy to the communities we serve. In addition, the team actively works to build Community Power reserves and develop policies that consider future economic conditions, provides an understandable and transparent operating budget for internal and external users, strives to keep the Community Power Board and staff informed of Community Power's fiscal condition and develops a budget that will ultimately prioritize people, transparency and our communities.

Board of Directors

Mayor Paloma Aguirre, Chair Supervisor Terra Lawson-Remer, Vice Chair Councilmember Sean Elo-Rivera, Director Councilmember Marco San Antonio, Director Councilmember Michael Inzunza, Director Councilmember Genevieve Suzuki, Director Councilmember Ditas Yamane, Director

Finance and Risk Management Committee

Councilmember Ditas Yamane, Chair Councilmember Genevieve Suzuki, Vice Chair Councilmember Michael Inzunza, Director

Community Advisory Committee

CHULA VISTA

- Anthony Sclafani
- (Vacant)

COUNTY OF SAN DIEGO

- Peter Andersen
- · Ross Pike

ENCINITAS

- · Gary L. Jahns
- Tara Hammond

IMPERIAL BEACH

- · Ilian Sandoval
- · Kenneth Hoyt

LA MESA

- David Harris
- · Shaun Sumner

NATIONAL CITY

- Aida Castañeda, Secretary
- · Larry Emerson, Vice Chair

SAN DIEGO

- · Luis Montero-Adams
- Matthew Vasilakis, Chair

Community Power Executive Team

Karin Burns, Chief Executive Officer Eric Washington, Chief Financial Officer and Deputy Chief Executive Officer/Treasurer Jack Clark, Chief Operating Officer Veera Tyagi, General Counsel Byron Vosburg, Chief Commercial Officer

Finance Department

Eric Washington, Chief Financial Officer and Deputy Chief Executive Officer/Treasurer Tim Manglicmot, Director of Finance Christopher Stephens, Procurement Manager Diana Gonzalez, Risk Manager Mark Alfaro, Finance Manager Jeb Spengler, Strategic Finance Manager Christopher Do, Senior Financial Analyst Julissa Mercedes, Financial Analyst Kevin Bateman, Financial Analyst



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

TO: Board of Directors

FROM: Kenny Key, Director of Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Amended and Restated Renewable Power Purchase

Agreement with Pelicans Jaw Solar, LLC

DATE: May 22, 2025

RECOMMENDATION:

Approve the proposed Second Amended and Restated Power Purchase Agreement ("A&R PPA") with Pelicans Jaw Solar, LLC to modify the Commercial Operation Date ("COD"), adjust pricing based on COD, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

BACKGROUND:

As San Diego Community Power (Community Power) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least ten 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 Community Power 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 Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power can develop its pro forma financial model.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power 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, Community Power has established a procurement target of 100% renewable by 2035.

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

After the original PPA was executed by the parties, staff were informed that additional volumes of solar and storage capacity could be available from the project. In April 2024, the Community Power Board of Directors approved the first amended and restated power purchase agreement to increase the volumes from 226 MW of solar generation to 440 MW and to increase the storage capacity from 118 MW to 238.5 MW.

SBE and Community Power began discussing this A&R PPA in late 2024. In 2025, SBE engaged with Community Power on moving the contractual commercial operation date to an earlier date in 2026 since the project now expects to be online in 2026.

ANALYSIS AND DISCUSSION:

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

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

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

Background on SBE:

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

- adder, a provision in the IRA designed to strengthen America's manufacturing base.
- SBE is sourcing solar modules, trackers, and structural steel domestically for several of its projects.

Contract Overview – Pelicans Jaw:

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

Community Benefits and Workforce Development:

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

Scope of Amendment:

- Modify commercial operation date to September 1, 2026. If that date is missed, the contract allows for price adjustments based on the actual commercial operation date.
- Adjust pricing to account for earlier commercial operation date.
- Update resource adequacy language to account for slide of day regulations.

COMMITTEE REVIEW:

In Q4 2024 the ECWG reviewed the A&R PPA for the project and recommended staff to move forward with the execution of this A&R PPA.

FISCAL IMPACT:

The competitive energy and capacity pricing of the A&R PPA are confidential, but the long-term purchase of renewable energy and capacity will provide Community Power with significant value and cost certainty over the term of this A&R PPA.

ATTACHMENTS:

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

ITEM 12 ATTACHMENT A

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

COVER SHEET

Seller: Pelicans Jaw Solar, LLC ("Seller")

Buyer: San Diego Community Power, a California joint powers authority ("Buyer")

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

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
CEC Pre-Certification Obtained	Complete
Obtain federal and state discretionary permits: [] CEQA, [] Cat Ex, []Neg Dec, [] Mitigated Neg Dec, [] EIR	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Guaranteed Construction Start Date	1/31/26
Procure Major Equipment	Complete
Expected Commercial Operation Date	4/1/27
Guaranteed Commercial Operation Date	4/1/27

<u>Delivery Term</u>: 15 Contract Years.

RPS ENERGY + STORAGE PPA EXECUTION VERSION

Expected Energy:

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

Guaranteed Capacity: 440 MW for the Generating Facility

Storage Contract Capacity: 238.5 MW

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

Resource Duration: 4 hours

Dedicated Interconnection Capacity: 440 MW

Guaranteed Storage Availability:



Guaranteed Efficiency Rate:

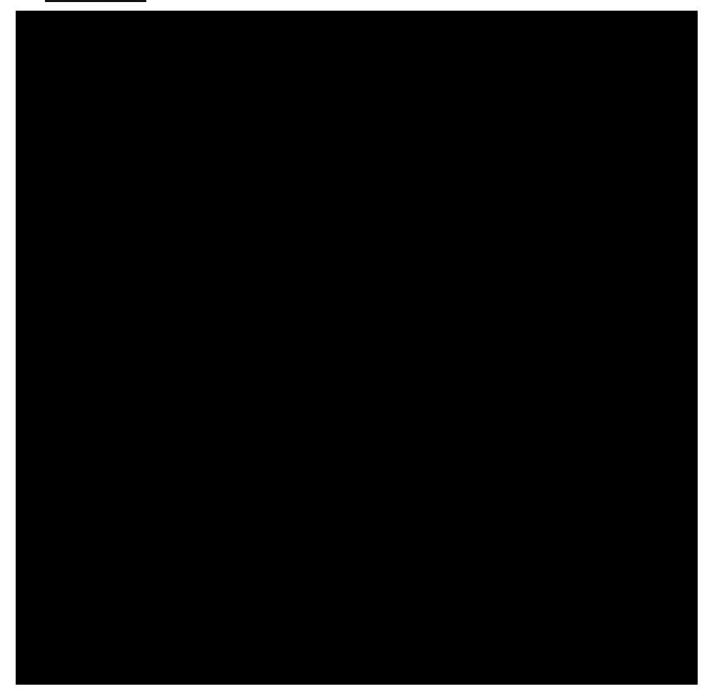
Contract Year	Guaranteed Efficiency Rate	
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

RPS ENERGY + STORAGE PPA EXECUTION VERSION

11		
12		
13	2	
14		
15		

Minimum Efficiency Rate:

Contract Price



RPS ENERGY + STORAGE PPA EXECUTION VERSION



Product:

- ⊠ Generating Facility Energy
- □ Discharging Energy
- ☑ Green Attributes (Portfolio Content Category 1)
- ☐ Capacity Attributes (select options below as applicable)

 - ☑ Partial Capacity Deliverability Status for the Storage Facility

Scheduling Coordinator: Buyer or Buyer's designated agent

Security:

Development Security:	
Performance Security:	

TABLE OF CONTENTS

ARTICLE 1	1 DEFINITIONS	1
1.1	Contract Definitions	1
1.2	Rules of Interpretation	25
ARTICLE 2	2 TERM; CONDITIONS PRECEDENT	26
2.1	Contract Term.	26
2.2	Conditions Precedent	27
2.3	Development; Construction; Progress Reports	28
2.4	Remedial Action Plan	29
ARTICLE 3	3 PURCHASE AND SALE	29
3.1	Purchase and Sale of Product	
3.2	Sale of Green Attributes	
3.3	Imbalance Energy.	
3.4	Ownership of Renewable Energy Incentives	
3.5	Future Environmental Attributes.	
3.6	Test Energy.	
3.7	Capacity Attributes.	
3.8	Resource Adequacy Failure	
3.9	CEC Certification and Verification.	
3.10	Reserved	
3.11	Non-Modificable Standard Terms and Conditions	
3.12	Compliance Expenditure Cap.	
3.13	Project Configuration	36
ARTICLE 4	4 OBLIGATIONS AND DELIVERIES	36
4.1	Delivery	36
4.2	Title and Risk of Loss.	37
4.3	Forecasting	37
4.4	Dispatch Down/Curtailment.	39
4.5	Charging Energy Management	
4.6	Reduction in Energy Delivery Obligation	
4.7	Guaranteed Energy Production.	
4.8	Storage Availability and Efficiency Rate.	
4.9	Storage Capacity Tests	
4.10	WREGIS	
4.11	Interconnection	
4.12	Green-E Certification	46
ARTICLE 5	5 TAXES	46
5.1	Allocation of Taxes and Charges.	46
5.2	Cooperation.	
ADTICLE	6 MAINTENANCE OF THE FACILITY	47

	6.1	Maintenance of the Facility.	47
	6.2	Maintenance of Health and Safety.	47
	6.3	Shared Facilities	47
ARTI	CLE 7	METERING	48
	7.1	Metering.	48
	7.2	Meter Verification	
ARTI	CLE 8	INVOICING AND PAYMENT; CREDIT	48
	8.1	Invoicing.	48
	8.2	Payment	
	8.3	Books and Records.	
	8.4	Invoice Adjustments.	
	8.5	Billing Disputes.	
	8.6	Netting of Payments	
	8.7	Seller's Development Security.	
	8.8	Seller's Performance Security	
	8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	
	8.10	Financial Statements.	52
ARTI	CLE 9	NOTICES	52
	9.1	Addresses for the Delivery of Notices	52
	9.2	Acceptable Means of Delivering Notice	
ARTI	CLE 1	0 FORCE MAJEURE	52
	10.1	Definition	52
	10.2	Termination Following Force Majeure Event	
	10.3	Notice for Force Majeure.	
	10.4	No Liability If a Force Majeure Event Occurs	
ARTI		1 DEFAULTS; REMEDIES; TERMINATION	
	11.1	Events of Default	
	11.1	Remedies; Declaration of Early Termination Date	
	11.2	Termination Payment	
	11.4	Notice of Payment of Termination Payment or Damage Payment	
	11.5	Disputes With Respect to Termination Payment	
	11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales from	00
	11.0	the Facility after Early Termination Date	60
	11.7	Rights And Remedies Are Cumulative	
	11.8	Mitigation	
ADTI		2 LIMITATION OF LIABILITY AND EXCLUSION OF	
ANII	CLE I	WARRANTIES	61
	12.1	No Consequential Damages.	61
	12.2	Waiver and Exclusion of Other Damages	
	12.3	Limitation on Pre-COD Liability.	

ARTICLE 1	3 REPRESENTATIONS AND WARRANTIES; AUTHORITY	62
13.1	Seller's Representations and Warranties.	62
13.2	Buyer's Representations and Warranties	
13.3	General Covenants	
13.4	Prevailing Wage	64
13.5	Workforce Development and Supplier Diversity	64
13.6	Community Benefits	
ARTICLE 1	4 ASSIGNMENT	65
14.1	General Prohibition on Assignments	65
14.2	Collateral Assignment	
14.3	Permitted Assignment by Seller	67
14.4	Permitted Assignment by Buyer	
ARTICLE 1	5 DISPUTE RESOLUTION	68
15.1	Governing Law.	68
15.2	Dispute Resolution.	
15.3	COD Expedited Dispute Resolution	
ARTICLE 1	6 INDEMNIFICATION	
16.1	Indemnity	70
16.2	Claims.	
	7 INSURANCE	
17.1	Insurance	71
ARTICLE 1	8 CONFIDENTIAL INFORMATION	72.
18.1	Definition of Confidential Information	
18.2	Duty to Maintain Confidentiality	
18.3	Irreparable Injury; Remedies	
18.4	Disclosure to Lenders, Etc.	
18.5		
ARTICLE 1	9 MISCELLANEOUS	73
19.1	Entire Agreement; Integration; Exhibits	73
19.2	Amendments	
19.3	No Waiver	74
19.4	No Agency, Partnership, Joint Venture or Lease	74
19.5	Severability	74
19.6	Mobile-Sierra	
19.7	Counterparts	
19.8	Electronic Delivery	
19.9	Binding Effect	
19.10	•	
19.11	Forward Contract	75

19.12 Further Assurances	
19.13 Change in Electric Market Design	75
19.14 Service Contract	76
EXHIBITS	
A. FACILITY DESCRIPTION	A-1
B. MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION	B-1
C. COMPENSATION	C-1
D. SCHEDULING COORDINATOR RESPONSIBILITIES	D-1
E. PROGRESS REPORTING FORM	E-1
F-1. AVERAGE EXPECTED ENERGY	F-1
F-2. AVAILABLE CAPACITY	F-2
G. GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION	G-1
H. FORM OF COMMERCIAL OPERATION DATE CERTIFICATE	H-1
I. FORM OF INSTALLED CAPACITY CERTIFICATE	I-1
J. FORM OF CONSTRUCTION START DATE CERTIFICATE	
K. FORM OF LETTER OF CREDIT	K-1
L. FORM OF GUARANTY	L-1
M. FORM OF REPLACEMENT RA NOTICE	M-1
N. NOTICES	N-1
O. STORAGE CAPACITY TESTS	O-1
P. ANNUAL STORAGE AVAILABILITY CALCULATION	
Q. OPERATING RESTRICTIONS	Q-1
R. METERING DIAGRAM	R-1
S. WORKFORCE DEVELOPMENT	S-1
V. FORM OF LIMITED ASSIGNMENT AGREEMENT	V-1

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

This Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement ("<u>Agreement</u>") is entered into as of May _____, 2025 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement, dated as of May 1, 2024, as amended by that certain First Amendment to Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated as of December 13, 2024 (as amended, the "First A&R PPA"); and

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the First A&R PPA as provided herein; and

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 <u>Contract Definitions</u>. 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", "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.
- "<u>Agreement</u>" has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
 - "Alternating Current" or "AC" means alternating current.
- "<u>Ancillary Services</u>" means all ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing consistent with the Operating Restrictions, as set forth in <u>Exhibit Q</u>.
 - "Annual Storage Availability" has the meaning set forth in Exhibit P.
- "<u>Approved Forecast Vendor</u>" means any of (a) the CAISO or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).
 - "Availability Adjustment" or "AA" has the meaning set forth in Exhibit P.
 - "Availability Adjustment Payment" has the meaning set forth in Exhibit P.
- "Available Generating Capacity" means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.
- "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.
 - "Bid" has the meaning as set forth in the CAISO Tariff.
- "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT) for the Party sending a Notice, or payment, or performing a specified action.
 - "Buyer" means San Diego Community Power, a California joint powers authority.
 - "Buyer Bid Curtailment" means the occurrence of both of the following:

- (a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time;
- (b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:
- (i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or
- (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or
- (iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

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

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

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

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

"Buyer's WREGIS Account" has the meaning set forth in Section 4.10(a).

"CAISO" means the California Independent System Operator Corporation.

"CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Generating Facility Energy delivered to the Delivery Point or the Storage Facility or all Charging Energy and Discharging Energy delivered to or from the Delivery Point, as applicable.

- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "CAISO Operating Order" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
- "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate, charge, discharge or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.
 - "Capacity Damages" has the meaning set forth in Section 5(a) of Exhibit B.
- "<u>CEC</u>" means the California Energy Commission, or any successor agency performing similar statutory functions.
- "CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard.
- "CEC Precertification" means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.
 - "CEQA" means the California Environmental Quality Act.
- "Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:
- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.
- "Charging Energy" means the Energy delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy that is not consumed in Electrical Losses or used for Station Use shall be used solely to charge the Storage Facility. Subject to the Operating Restrictions, Charging Energy may be delivered from the CAISO Grid in any Settlement Interval during which the Generating Facility is not producing Generating Facility Energy.
- "Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, (i) any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.
 - "COD Certificate" has the meaning set forth in Exhibit B.
 - "Commercial Operation" has the meaning set forth in Exhibit B.
 - "Commercial Operation Date" has the meaning set forth in Exhibit B.
- "Commercial Operation Delay Damages" or "COD Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b)
- "Communications Protocols" means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.
 - "Compliance Action" has the meaning set forth in Section 3.12(b).
 - "Compliance Expenditure Cap" has the meaning set forth in Section 3.12(b).
 - "Confidential Information" has the meaning set forth in Section 18.1.
- "Construction Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b)
 - "Construction Start" has the meaning set forth in Exhibit B.
 - "Construction Start Date" has the meaning set forth in $\underline{\text{Exhibit B}}$.
- "Contract Capacity" means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

"<u>Contract Price</u>" has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

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

"Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

"Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

"<u>CPUC</u>" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

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

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

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

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

"Curtailment Order" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, requiring such Party to curtail deliveries of Generating Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

- (b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;
- (c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Generating Facility Energy to the Delivery Point; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

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

"Damage Payment"

"<u>Day-Ahead Forecast</u>" has the meaning set forth in Section 4.3(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"<u>Day-Ahead Schedule</u>" has the meaning set forth in the CAISO Tariff.

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

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

- "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
- "<u>Deficient Month</u>" has the meaning set forth in Section 4.10(e).
- "Delay Damages" means Construction Delay Damages and COD Delay Damages.
- "<u>Delivery Point</u>" has the meaning set forth in <u>Exhibit A</u>.
- "<u>Delivery Term</u>" 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.
 - "<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.
- "<u>Development Security</u>" means (i) cash or (ii) a Letter of Credit in the amount set forth for the Development Security on the Cover Sheet.
- "<u>Discharging Energy</u>" means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Station Use and Electrical Losses to the Delivery Point to the extent such Electrical Losses and Station Use are not already reflected in the Storage Facility Meter measurements.
- "Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; provided, any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, except that any Discharging Notice that results in a reduction in Generating Facility Energy will be deemed a Buyer Curtailment Order for all purposes hereunder. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.
 - "Early Termination Date" has the meaning set forth in Section 11.2(a).
 - "Effective Date" has the meaning set forth in the Preamble.
- "<u>Efficiency Rate</u>" means the tested round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

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

"<u>Eligible Renewable Energy Resource</u>" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

"Energy" means Alternating Current electrical energy measured in MWh.

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

"Energy Management System" or "EMS" means the Facility's energy management system.

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

"Energy Supply Bid" has the meaning set forth in the CAISO Tariff.

"Event of Default" has the meaning set forth in Section 11.1.

"Excess MWh" has the meaning set forth in Exhibit C.

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

"Expected Energy" means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable, provided, that prior to the Construction Start Date, Seller may update the Expected Energy by providing Notice to Buyer along with a resource evaluation report prepared by an independent engineer, in which case the Expected Energy for the first Contract Year will be automatically revised without further action of the Parties to equal the "P-50" estimate of the Facility's generation for the first Contract Year as set forth in such report (and the Expected Energy for the remaining Contract Years will be automatically adjusted to reflect 0.50% degradation per Contract Year). Such automatic revision is only allowed without further action of the Parties if the revised expected energy is within ten percent (10%) of the original Expected Energy specified on the Cover Sheet as of the Effective Date.

"Facility" means the Generating Facility and the Storage Facility.

"<u>Facility Energy</u>" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period.

"FERC" means the Federal Energy Regulatory Commission.

"Flexible Capacity" has the meaning set forth in the CAISO Tariff.

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

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<u>Forced Facility Outage</u>" means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

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

"Forward Certificate Transfers" has the meaning set forth in Section 4.10(a).

"Future Environmental Attributes" shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of

which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"Generating Facility" means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Generating Facility Energy to (i) to the Delivery Point, and (ii) to the Storage Facility as Charging Energy; provided, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

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

"Generating Facility Meter" means the CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

"GEP Damages" has the meaning set forth in Section 4.7.

"Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not

include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"Green Tag Reporting Rights" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by 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.

"<u>Guaranteed Commercial Operation Date</u>" means the date set forth on the Cover Sheet, as such date may be extended pursuant to <u>Exhibit B</u>.

"<u>Guaranteed Construction Start Date</u>" means the date set forth on the Cover Sheet, as such date may be extended pursuant to <u>Exhibit B</u>.

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

"Guaranteed Energy Production" means an amount of Adjusted Energy Production, as measured in MWh, equal to applicable Performance Measurement Period.

"Guaranteed Energy Production" means an amount of Adjusted Energy Production, as measured in MWh, equal to applicable Performance Measurement Period.

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

RPS ENERGY + STORAGE PPA EXECUTION VERSION

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

"Guarantor" means, with respect to Seller, any Person that (a) does not already have any
material credit exposure to Buyer under any other agreements, guarantees, or other arrangements
at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably
acceptable to Buyer, (c) has a Credit Rating of
, (d) has a tangible net worth of at least
, (e) is incorporated or organized in a jurisdiction of the United States and is in
good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of
Buyer.

"Guaranty" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

"Imbalance Energy" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy, Discharging Energy, or Generating Facility Energy, as applicable, deviates from the amount of Scheduled Energy.

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

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

"<u>Indemnifying Party</u>" has the meaning set forth in Section 16.1(a).

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

"Installed Battery Capacity" means the maximum dependable operating capability of the Storage Facility to discharge Energy for the Resource Duration at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"<u>Installed Capacity</u>" 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, 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 <u>Exhibit I</u> hereto.

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

"Interconnection Agreement" means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"Interconnection Facilities" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"<u>Interconnection Point</u>" means the point at which Seller's Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

"Interest Rate" has the meaning set forth in Section 8.2.

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

"Inter-SC Trade" or "IST" has the meaning set forth in the CAISO Tariff.

"Investment Grade Credit Rating" means a Credit Rating of

"ITC" means the investment tax credit established pursuant to Section 48 or Section 48E of the United States Internal Revenue Code of 1986.

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>Law</u>" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"Lender" means, collectively, any Person (i) providing letters of credit, surety bonds, senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

"<u>Licensed Professional Engineer</u>" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

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

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for

the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

"Master File" has the meaning set forth in the CAISO Tariff.

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

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

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

"<u>Maximum Stored Energy Level</u>" means the maximum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in <u>Exhibit Q</u>.

"<u>Milestones</u>" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"Minimum Efficiency Rate" means the percentage specified on the Cover Sheet.

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

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

"Monthly Delivery Forecast" has the meaning set forth in Section 4.3(b).

"Moody's" means Moody's Investors Service, Inc.

- "<u>MW</u>" means megawatts in Alternating Current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hour measured in Alternating Current, unless expressly stated in terms of direct current.
- "Negative LMP" means, in any Settlement Period or Settlement Interval, the Real-Time Market LMP at the Facility's PNode is less than Zero dollars (\$0).
 - "Negative LMP Costs" has the meaning set forth in Exhibit C.
- "<u>NERC</u>" means the North American Electric Reliability Corporation or any successor entity performing similar functions.
 - "Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.
 - "Network Upgrades" has the meaning set forth in the CAISO Tariff.
 - "Non-Defaulting Party" has the meaning set forth in Section 11.2.
- "Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).
 - "Notice to Proceed" has the meaning set forth in Exhibit B.
- "Operating Restrictions" means those rules, requirements, and procedures set forth on Exhibit Q.
- "Pacific Prevailing Time" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.
 - "Partial Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.



"<u>Participating Transmission Owner</u>" or "<u>PTO</u>" 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.

"<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth as the Performance Security on the Cover Sheet.

"<u>Permitted Transferee</u>" means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than

and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

"Person" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"<u>Planned Outage</u>" 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.

"Portfolio Content Category 1" or "PCC1" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"PNode" has the meaning set forth in the CAISO Tariff.

"Product" has the meaning set forth on the Cover Sheet.

"Progress Report" means a progress report including the items set forth in Exhibit E.

"Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period

with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"<u>PTC</u>" means the production tax credit established pursuant to Section 45 or Section 45Y of the United States Internal Revenue Code of 1986.

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

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

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

"RA Guarantee Date" means the Commercial Operation Date.

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

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

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

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

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

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

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

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

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"Renewable Energy Incentives" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production or storage of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"Renewable Rate" has the meaning set forth on the Cover Sheet.

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

"Replacement Green Attributes" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production or a different year as agreed to by the Parties, as the Renewable Energy Credits that would have been generated by the Generating Facility.

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

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

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

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

"Resource Adequacy Resource" has the meaning set forth in the CAISO Tariff.

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

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

"<u>Resource Duration</u>" means the number of continuous hours of discharge set forth on the Cover Sheet.

"<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" has a corollary meaning.

"Scheduled Energy" means the Charging Energy, Discharging Energy, or Generating Facility Energy, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

- "Security Interest" has the meaning set forth in Section 8.9.
- "Self-Schedule" has the meaning set forth in the CAISO Tariff.
- "Seller" has the meaning set forth on the Cover Sheet.
- "Seller Initiated Test" has the meaning set forth in Section 4.9(b).

"Seller's WREGIS Account" has the meaning set forth in Section 4.10(a).

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Settlement Period" has the meaning set forth in the CAISO Tariff.

"Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the Interconnection Point, including the Interconnection Agreement itself, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

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

"<u>Site</u>" means the real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, 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.

"<u>Site Control</u>" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"<u>SP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"<u>State of Charge</u>" or "<u>SOC</u>" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Storage Capacity multiplied by four (4) hours, expressed as a percentage.

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

"Storage Capacity" means (a) the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Storage Facility is able to provide as the Facility is configured and subject to the Operating Restrictions and that relate to the maximum dependable operating capability of the Storage Facility to discharge Energy.

"Storage Capacity Damages" has the meaning set forth in Exhibit B.

"<u>Storage Capacity Test</u>" or "<u>SCT</u>" 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 <u>Exhibit O</u>.

"Storage Contract Capacity" means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

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

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

"Storage Facility" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"Storage Facility Meter" means a CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of

Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Storage Facility Metering Point" means the location or locations of the Storage Facility Meter shown on Exhibit R.

"Storage Payment" has the meaning set forth in Exhibit C.

"Storage Product" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

"Storage Rate" has the meaning set forth on the Cover Sheet.

"<u>Stored Energy Level</u>" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged 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.

"<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Tax Credits</u>" 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).

"<u>Termination Payment</u>" has the meaning set forth in Section 11.3.

"Test Energy" means Generating Facility Energy delivered prior

"<u>Test Energy Rate</u>" has the meaning set forth in Section 3.6.

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

"<u>Transmission Provider</u>" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"<u>Transmission System</u>" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"<u>Ultimate Parent</u>" means SBE US Holdings One, LLC, a Delaware limited liability company.

"Variable Energy Resource" or "VER" has the meaning set forth in the CAISO Tariff.

"<u>WREGIS</u>" 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).

"<u>WREGIS Certificates</u>" 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.

"<u>WREGIS Operating Rules</u>" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;

- (k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
- (l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("<u>Contract Term</u>"); <u>provided</u>, <u>however</u>, that subject to Buyer's obligations in Section 2.5 and/or Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.
- Conditions Precedent. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least thirty (30) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date. If Buyer rejects Seller's Notice of Commercial Operation, Buyer will provide a detailed statement of the reasons for such rejection together with its Notice of such rejection. If Seller disagrees with Buyer's rejection of Seller's Notice of Commercial Operation or if the Parties are unable to address the concerns stated in Buyer's Notice of rejection to the mutual satisfaction of both Parties, then Seller may initiate the expedited dispute resolution process set forth in Section 15.3. If Seller initiates the expedited dispute resolution process and it is determined pursuant to such dispute resolution process that Seller met the requirements for Commercial Operation set forth in this Section 2.2, Commercial Operation shall occur as of the date that the requirements for Commercial Operation were initially satisfied, as determined

RPS ENERGY + STORAGE PPA EXECUTION VERSION

pursuant to such dispute resolution process.

- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H,

 and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity
- (b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
- (c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;
- (d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;
- (e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);
- (f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
- (g) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;
- (h) Insurance requirements for the Facility that are required to be in place during the Delivery Term have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;
- (i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

- (j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.
- 2.3 <u>Development; Construction; Progress Reports.</u> Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in <u>Exhibit E</u>. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- Remedial Action Plan. If Seller becomes aware that it will not achieve the Construction Start Date by the Guaranteed Construction Start Date, Seller shall submit to Buyer, within ten (10) Business Days of becoming aware that the Guaranteed Construction Start Date will be missed, a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Guaranteed Construction Start Date, including the cause of the delay, and Seller's detailed description of its proposed course of action to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone, including the Guaranteed Construction Start Date.



ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses), in each case, except with respect to Seller-Retained Capacity Attributes. At its sole discretion, Buyer may during the

Delivery Term re-sell all or a portion of the Product (except with respect to Seller-Retained Capacity Attributes), provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof (except with respect to Seller-Retained Capacity Attributes), from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Generating Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

- 3.2 <u>Sale of Green Attributes</u>. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Generating Facility Energy.
- 3.3 <u>Imbalance Energy</u>. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.
- 3.4 Ownership of Renewable Energy Incentives. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

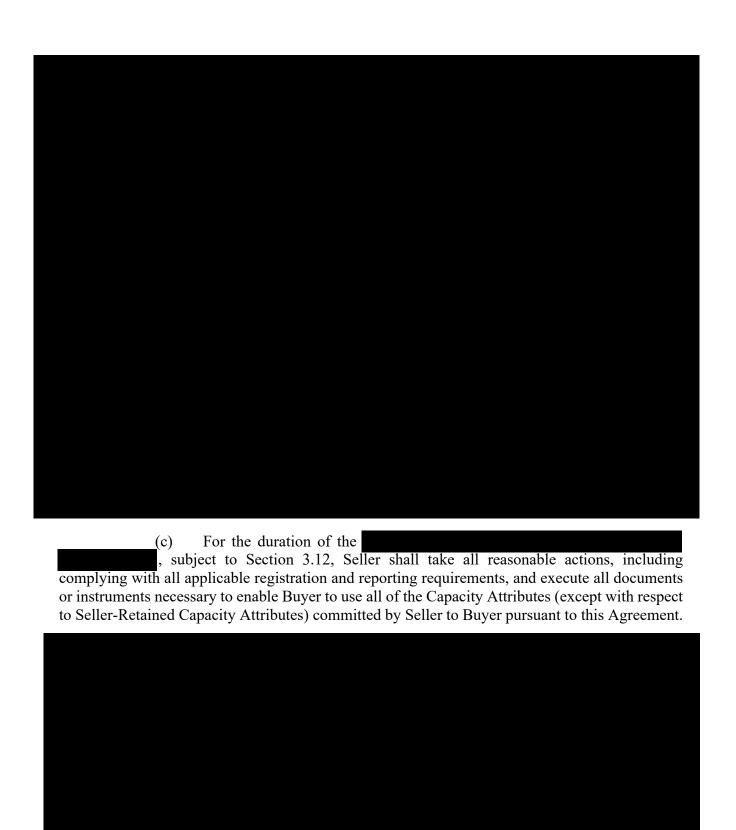
3.5 Future Environmental Attributes.

- (a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.
- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of

RPS ENERGY + STORAGE PPA EXECUTION VERSION

further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

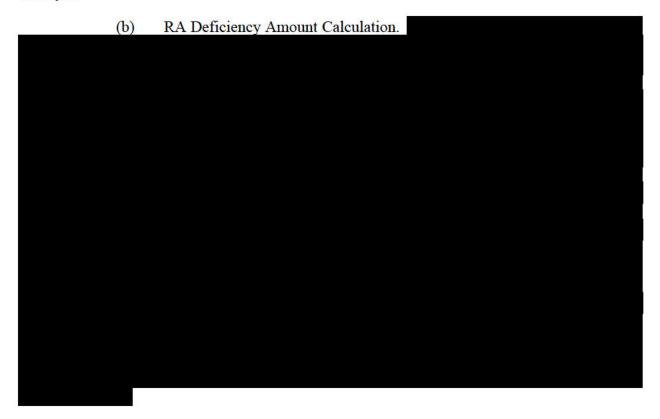
3.7 Capacity Attributes. Seller shall request Partial Capacity Deliverability Status for at least the Storage Contract Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Partial Capacity Deliverability Status. (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility (except with respect to Seller-Retained Capacity Attributes). (b) Throughout the Deliverability Status or Partial Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract Capacity by the Commercial Operation Date, or as soon as practicable thereafter if such status	and the other material terms of this rigident.
at least the Storage Contract Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Partial Capacity Deliverability Status. (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility (except with respect to Seller-Retained Capacity Attributes). (b) Throughout the Delivery Term, Seller shall maintain eligibility for Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract Capacity by the Commercial Operation Date, or as soon as practicable thereafter if such status	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 (the " <u>Test Energy Rate</u> "). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this
Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility (except with respect to Seller-Retained Capacity Attributes). (b) Throughout the Delivery Term, Seller shall maintain eligibility for Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract Capacity by the Commercial Operation Date, or as soon as practicable thereafter if such status	at least the Storage Contract Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades
Term, maintain eligibility for Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract Capacity by the Commercial Operation Date, or as soon as practicable thereafter if such status	Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes
	Term, Seller shall maintain eligibility for Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer (except with respect to Seller-Retained Capacity Attributes). Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status or Partial Capacity Deliverability Status for the Facility in the amount of the Storage Contract





3.8 Resource Adequacy Failure.

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



(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 $\underline{\text{Exhibit M}}$ at least thirty (30) days before the RA Compliance Showing deadline for the applicable Showing Month.

3.9 <u>CEC Certification and Verification</u>. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor).

Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, subject to Section 3.12, Seller shall obtain and maintain throughout the remainder of the Interim Operation Period (if applicable) and the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 Reserved.

3.11 Non-Modifiable Standard Terms and Conditions.

- (a) <u>Tracking of RECs in WREGIS</u>. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].
- (b) <u>Transfer of Renewable Energy Credits</u>. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].
- (c) <u>Eligibility</u>. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

RPS ENERGY + STORAGE PPA EXECUTION VERSION

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

3.12 Compliance Expenditure Cap.

- (a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Subject to Section 3.12(b), Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law relating to Green Attributes and/or Capacity Attributes to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Generating Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard.
- (b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs (A) to cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be in compliance with the RPS or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (B) or to obtain, maintain, convey or effectuate Buyer's use of any Capacity Attributes, Resource Adequacy Benefits, or Ancillary Services, or (C) a change in WREGIS Operating Rules or CRS requirements after the Effective Date increases Seller's costs to comply with its obligations under Section 4.10 or Section 4.12, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (any action required to be taken by Seller to comply with such change in Law, a "Compliance Action"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at per MW of Contract Capacity in aggregate over the Contract Term (the "Compliance Expenditure Cap").
- (c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.
- (d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "Accepted

<u>Compliance Costs</u>"), 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 and continuing through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility or the Delivery Point to the Storage Facility (but excluding the cost of Charging Energy itself), and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges, and supplying any non-Generating Facility Charging Energy to the Delivery Point. The Facility Energy, any other Products, and non-Generating Facility Charging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. Buyer

acknowledges that the Green Attributes that could be produced by the Generating Facility may be reduced due to Storage Facility efficiency losses. For the avoidance of doubt, a reduction in WREGIS Certificates due to Storage Facility efficiency losses will not be deemed a WREGIS Certificate Deficit.



4.2 **Title and Risk of Loss**.

- (a) <u>Energy</u>. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- (b) <u>Green Attributes</u>. 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 <u>Forecasting</u>. Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.
- (a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (iii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.
- (b) <u>Monthly Forecast of Energy and Available Generating Capacity</u>. 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 <u>Exhibit F-2</u> ("<u>Monthly Delivery Forecast</u>").

Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity, (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's non-binding best estimate of (i) the Available Generating Capacity, (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecast shall be sent to Buyer's SC. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on (in order of priority) (1) any Real-Time Forecast provided in accordance with Section 4.3(d), or (2) the Monthly Delivery Forecast or (3) Buyer's best estimate based on information reasonably available to Buyer.

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

RPS ENERGY + STORAGE PPA EXECUTION VERSION

- (e) <u>Forced Facility Outages.</u> Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.
- (f) <u>Forecasting Penalties</u>. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.
- (g) <u>CAISO Tariff Requirements</u>. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 <u>Dispatch Down/Curtailment</u>.

- (a) <u>General</u>. 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, <u>provided</u> that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Generating Facility.
- (b) <u>Buyer Curtailment.</u> Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with <u>Exhibit C.</u>
- Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Generating Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.
- (d) Generating Facility Energy will have priority over Discharging Energy from the Storage Facility.

of Charge during any Curtailment Period or during a Buyer Curtailment Period, to the extent permitted under the CAISO Tariff, Generating Facility Energy will be used to charge the Facility until it reaches a one hundred percent (100%) State of Charge.

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

- (a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility.
- Delivery Term, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice). Seller shall comply with all valid Charging Notices, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Seller Initiated Test (including Facility maintenance

or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

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

Facility during the pursuant to a valid Discharging Notice, or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

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

 (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility,

RPS ENERGY + STORAGE PPA EXECUTION VERSION

and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility shall be for Seller's account. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid.

Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account.

- (h) <u>Station Use</u>. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.
- (i) Grid Charging. At all times during each Contract Year, the aggregate Contract Year-to-date Charging Energy provided from a source other than the Generating Facility must be equal to or less than
- 4.6 **<u>Reduction in Energy Delivery Obligation</u>**. For the avoidance of doubt, and in no way limiting Section 3.1, Section 4.7, or <u>Exhibit G</u> or <u>Exhibit P</u>:
- (a) <u>Facility Maintenance</u>. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff, and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including the cost of any replacement Capacity Attributes as required by the CAISO). During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise

required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.
- (c) <u>System Emergencies and other Interconnection Events</u>. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.
- (d) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes as necessary to maintain health and safety pursuant to Section 6.2.
- 4.7 <u>Guaranteed Energy Production</u>. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("<u>GEP Damages</u>"); provided, Seller may, as an alternative to paying GEP Damages, provide Replacement Product in accordance with Exhibit G.

4.8 Storage Availability and Efficiency Rate.

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

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

4.9 Storage Capacity Tests.

- (a) Prior to the Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.
- Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all applicable data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller ("Seller <u>Initiated Test</u>"), including all tests conducted Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Battery Capacity, and other Sellerrequested discretionary tests or dispatches, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including any test required by CAISO and all required annual tests pursuant to Exhibit O ("Buyer Dispatched Test"), Buyer shall (x) pay Seller the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test. Charging Notices or Discharging Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Annual Storage Availability.
- (c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Storage Contract Capacity (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C, until a revised Storage Contract Capacity and/or Efficiency Rate, as applicable, is established pursuant to a subsequent Storage Capacity Test.

- 4.10 <u>WREGIS</u>. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy or Facility Energy, as applicable, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.
- WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.
- (b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Generating Facility Energy or Facility Energy, as applicable, for such calendar month as evidenced by the Facility's metered data.
- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.
- (e) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Generating Facility Energy for the same calendar month ("Deficient Month") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes within ninety (90) days after the Deficient Month (i) upon a schedule reasonably

acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

- (f) Subject to Section 3.12, if (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.
- 4.11 <u>Interconnection</u>. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity; provided that Buyer acknowledges that such interconnection capacity is subject to reduction, limitation, or curtailment as set forth in the Interconnection Agreement.
- Green-E Certification. Upon request of Buyer and subject to Section 3.12, Seller 4.12 shall submit, a Green-e® Energy Tracking Attestation Form ("Attestation") for Product delivered Resource Solutions under Agreement to the Center for ("CRS") https://www.tfaforms.com/4652008 or its successor. Subject to Section 3.12, the Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Generating Facility Energy was generated, whichever is later.

ARTICLE 5 TAXES

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 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

- 6.1 <u>Maintenance of the Facility</u>. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation, batteries and solar panels.
- 6.2 <u>Maintenance of Health and Safety</u>. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on <u>Exhibit N</u> of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.
- Shared Facilities. The Parties acknowledge and agree that certain of the Shared 6.3 Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain Shared Facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (iii) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

7.1 **Metering**.

- Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a single CAISO Resource ID for the Facility, which is a combination of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall be consistent with the metering diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Generating Facility Meter and Storage Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.
- 7.2 Meter Verification. Seller shall test the Generating Facility Meter and Storage Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 <u>Invoicing</u>. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any); the calculation of

Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period; and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

- 8.2 Payment. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the 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 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).
- 8.4 <u>Invoice Adjustments</u>. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies expect to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2,

accruing from the date on which the adjusted amount should have been due.

- Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.
- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, C and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required to return such Development Security hereunder. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.
- 8.8 <u>Seller's Performance Security</u>. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in <u>Exhibit L</u>. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish

the Performance Security (including a Guaranty) in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 <u>Financial Statements</u>. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. 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 <u>Exhibit N</u> or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
- 9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "<u>Force Majeure Event</u>" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide;

sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

- Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Product at a lower price, or Seller's ability to sell the 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 Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.
- (d) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such excuse for Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 Termination Following Force Majeure Event.



- Notice for Force Majeure. Within five (5) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, all as known or estimated in good faith by the claiming Party. Failure to provide timely notice as described in the prior sentence constitutes a waiver of the Force Majeure Event as to all periods prior to the delivery of the notice. Upon written request from the non-claiming Party, the claiming Party shall provide documentation describing the claiming Party's efforts to overcome the Force Majeure Event. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.
- of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

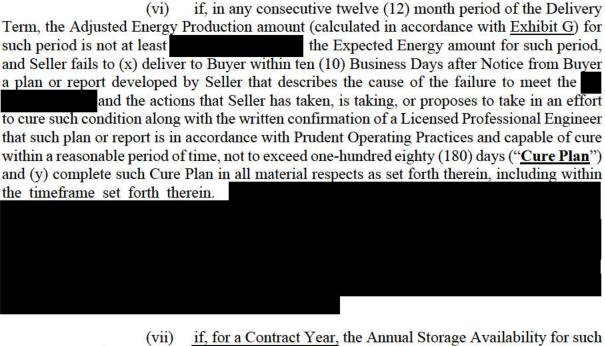
- 11.1 Events of Default. An "Event of Default" shall mean,
- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default, the occurrence of any of the following:

- (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
- (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section11.1; and except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (viii), and (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (3) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(vii), the exclusive remedies for which are set forth in Section 4.8 and Exhibit P; and (4) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(x), the exclusive remedies for which are set forth in Section 4.8 and Exhibit C) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
 - (i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, other than Replacement Product;
 - (ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B

RPS ENERGY + STORAGE PPA EXECUTION VERSION

and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

- (iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;
 - (iv) [reserved];
- (v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;



Contract Year is not at least and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein.

(viii) beginning with the second Contract Year and for each Contract

RPS ENERGY + STORAGE PPA EXECUTION VERSION

Year thereafter, the Adjusted Energy Production amount (calculated in accordance with
Exhibit G) is not at least of the Expected Energy amount in any Contract
Year and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from
Buyer a Cure Plan and (y) complete such Cure Plan in all material respects as set forth therein,
including within the timeframe set forth therein.
(ix) if, in any two (2) consecutive Contract Year period during the
Delivery Term, the Adjusted Energy Production amount (calculated in accordance with
Exhibit G) is not at least of the Expected Energy amount for such two
(2) consecutive Contract Year period and Seller fails to (x) deliver to Buyer within ten (10)
Business Days after Notice from Buyer a Cure Plan and (y) complete such Cure Plan in all
material respects as set forth therein, including within the timeframe set forth therein.

- (x) if, Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period;
 - (xi) if, Seller fails to maintain a Storage Capacity equal to at least of the Storage Contract Capacity for more than
- (xii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;
- (xiii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
- (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
- (C) the Guarantor becomes Bankrupt;
- (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
- (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.
- (xiv) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
 - (B) the issuer of such Letter of Credit becomes Bankrupt;
 - (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
 - (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
 - (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
 - (F) such Letter of Credit fails or ceases to be in full force and

effect at any time; or

- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.
- 11.3 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate

RPS ENERGY + STORAGE PPA EXECUTION VERSION

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 <u>Notice of Payment of Termination Payment or Damage Payment</u>. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.
- 11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer, such approval not to be unreasonably withheld, conditioned, or delayed. Seller shall indemnify and hold Buyer harmless from all

benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

- 11.7 <u>Rights And Remedies Are Cumulative</u>. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
- 11.8 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

- 12.1 <u>No Consequential Damages</u>. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.
- 12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 4.10, 10.2(b), 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE

RPS ENERGY + STORAGE PPA EXECUTION VERSION

PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

12.3 <u>Limitation on Pre-COD Liability</u>. Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons,

For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has achieved Commercial Operation.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law

presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility is located in the State of California.
- (f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (a) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
- (b) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
- (c) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

- (d) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)
- (e) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- 13.3 <u>General Covenants</u>. 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 <u>Prevailing Wage</u>. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("<u>Prevailing Wage Requirement</u>"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.
- 13.5 <u>Workforce Development and Supplier Diversity</u>. Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Clearinghouse, and voluntary disclosure regarding Seller's efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to <u>Exhibit S</u>.
- 13.6 <u>Community Benefits</u>. Seller pledges to deliver five hundred thousand dollars (\$500,000.00) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer's service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives

Buyer intends to fund. Seller shall make this payment prior to January 31, 2026 upon Seller's review of the scope of the initiatives to be funded by Buyer. Upon Seller's request, Buyer's personnel responsible for allocating funding to community benefits initiatives will meet with Seller to discuss the initiatives to be funded by Buyer. Notwithstanding anything to the contrary in this Section 13.6, Buyer will not make any public statement about the Facility, this Agreement, Seller, or Seller's Affiliates in connection with any community benefits initiatives funded with Seller's community benefits funds paid through this Section 13.6 without the prior written consent of Seller.

ARTICLE 14 ASSIGNMENT

- General Prohibition on Assignments. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that Buyer's consent will not be required for any Change of Control of Seller where Seller is controlled by a Permitted Transferee following such transaction. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall be responsible for the non-assigning Party's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party.
- 14.2 <u>Collateral Assignment</u>. Subject to the provisions of this Section 14.2, Seller or any of its Affiliates involved in the Facility has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("<u>Collateral Assignment Agreement</u>"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender including with respect to the provisions set forth below, with such agreement not to be unreasonably withheld, and shall include, among others, the following provisions:
- (a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;
- (b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within thirty (30) days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

- (c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);
- (d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
- (f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after taking possession (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (excluding any Events of Default which by their nature are incapable of being cured) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:
 - (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;

- (g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after such sale or transfer as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and
- (h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to cause Buyer to enter into a replacement agreement having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within forty-five (45) days after such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.
- 14.3 <u>Permitted Assignment by Seller</u>. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:
 - (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume, upon such transfer or assignment, all of Seller's obligations and liabilities under this Agreement arising on and after such assignment, and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.4 <u>Permitted Assignment by Buyer</u>. Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has an Investment Grade

Credit Rating ("Limited Assignee") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of a limited assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, Buyer shall pay Seller for any payments of amounts due under this Agreement that are not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment. Subject to the foregoing, Buyer may make such assignment by delivering Notice after the form of limited assignment agreement has been mutually agreed upon and 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 documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer. The form of limited assignment agreement shall be substantially in the form of the attached Exhibit V, as modified to reflect the terms and conditions mutually agreed upon by Seller, Buyer, and Limited Assignee pursuant to this Section 14.4.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17] The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.
- Dispute Resolution. In the event of any dispute arising under this Agreement (other than a dispute regarding whether the requirements for Commercial Operation have been achieved, which shall be subject to Section 15.3), within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this

15.3 **COD Expedited Dispute Resolution**.

- (a) If Seller initiates a dispute pursuant to Section 2.2 regarding whether the requirements for Commercial Operation have been achieved, then such dispute will be resolved pursuant to this Section 15.3. Any such dispute will be determined by an independent expert, who shall be a mutually acceptable third party with training and experience in the disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion (the "Independent Expert"), which determination shall be (x) except as otherwise provided in this Section 15.3, made in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association ("AAA"), as amended and effective on the date Seller provides Notice of its intent to submit the dispute to an independent expert, and (y) binding upon the Parties. Seller may commence the COD dispute process with AAA by notifying AAA and Buyer in writing ("COD Dispute Notice") of Seller's desire that the dispute be resolved through a determination by an independent expert.
- (b) The determination shall be conducted by a sole Independent Expert. The Parties may select any mutually acceptable Independent Expert. If the Parties cannot agree on an Independent Expert within five (5) days after the date of the COD Dispute Notice, then the AAA's arbitration administrator shall send a list and resumes of three (3) available independent experts meeting the qualifications set forth in Section 15.3 to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the Independent Expert. If more than one name remains, either because one or both Parties have failed to respond to the AAA's arbitration administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's arbitration administrator will choose the Independent Expert from the remaining names. If the designated Independent Expert shall die, become incapable or, unwilling to, or unable to serve or proceed with the determination, a substitute independent expert shall be appointed in accordance with the selection procedure described above, and such substitute Independent Expert shall have all such powers as if he or she has been originally appointed herein.
- (c) Within ten (10) days of the appointment of the Independent Expert pursuant to Section 15.3(b), each Party shall submit to the Independent Expert a written report containing its position with respect to the dispute, and arguments therefor together with supporting documentation. Discovery shall be limited to Facility documentation relating to the dispute. Within thirty (30) days from receipt of such submissions, the Independent Expert shall select one or the other Party's position with respect to the dispute, whereupon such selection shall be a binding determination upon the Parties for all purposes hereof. The costs of the determination by the Independent Expert of any dispute, including fees and expenses, shall be shared equally between the Parties, *however*, Buyer's shall of the costs for dispute resolution under this 15.3 shall not exceed fifty thousand dollars (\$50,000). If the Independent Expert fails to render a decision within sixty (60) days from receipt of each Party's submissions, 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.

- (d) All verbal and written communications between the Parties and issued or prepared in connection with this Section 15.3 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.
- (e) All deadlines specified in this Section 15.3 may be extended by mutual agreement of the Parties.

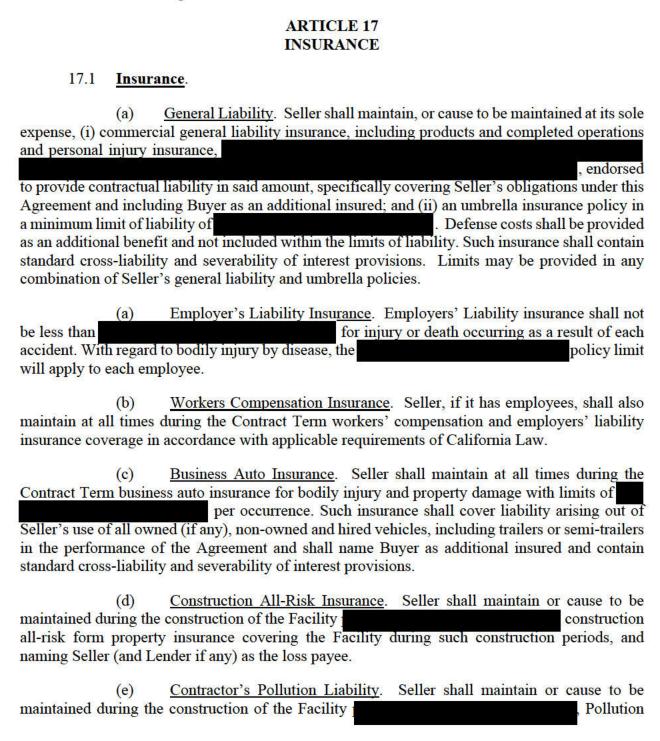
ARTICLE 16 INDEMNIFICATION

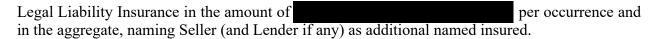
16.1 **Indemnity**.

- (a) Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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 directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement ("<u>Indemnifiable Losses</u>").
- (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.
- Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the

RPS ENERGY + STORAGE PPA EXECUTION VERSION

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.





- (f) <u>Subcontractor Insurance</u>. Seller shall use commercially reasonable efforts to require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than ; (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 per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).
- maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.
- (h) Evidence of Insurance. Within 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 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

Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is

determined by Buyer to be subject to the California Public Records Act.

- **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "Receiving **Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "Disclosing Party"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).
- 18.3 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 to the same extent as if it were a Party.
- 18.5 <u>Press Releases</u>. 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. 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 <u>Amendments</u>. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.
- 19.3 <u>No Waiver</u>. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender and/or Indemnified Party.
- 19.5 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.
- 19.7 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.
- 19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.
- 19.12 <u>Further Assurances</u>. 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.
- Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such

negotiation or dispute resolution.

19.14 <u>Service Contract</u>. The Parties acknowledge and agree that this Agreement is intended to constitute a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended from time to time.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

PELICANS JAW SOLAR, LLC	SAN DIEGO COMMUNITY POWER, a California joint powers authority
By:	
Name:	By:
Title:	Name:
	Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Pelicans Jaw Solar

Site includes all or some of the following APNs: 044-101-02, 044-101-05, 044-101-03, 044-101-06, 044-101-11, 044-101-16, 044-110-03, 044-110-25, 044-102-01, 044-102-03, 044-102-05,044-102-21, 044-102-22, 044-103-01, 044-103-04, 044-103-06, 044-103-08, 044-103-09, 044-150-05, 044-150-17, 044-130-39, 044-130-18, 044-130-21, 044-130-16, & 044-102-23

County: Kern

CEQA Lead Agency: Kern County

Zip Code: 93249

Latitude and Longitude: 35.861973, -119.468825

Facility Description: 440 MW solar + 954 MWh (238.5 MW x 4 hours) storage

Delivery Point: PNode, as set forth below.

Generating Facility Meter and Metering Points: See Exhibit R.

Storage Facility Meter and Metering Points: See Exhibit R.

PNode: The PNode assigned to the Facility by the CAISO.

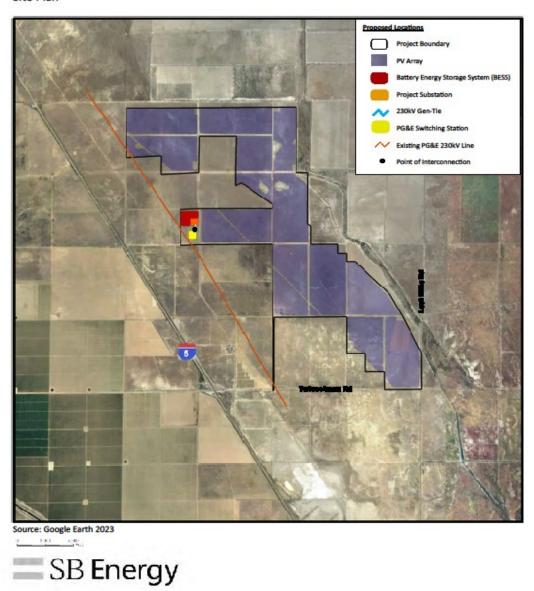
Interconnection Point: New 230kV switching station near Gates-Midway POI

Participating Transmission Owner: PG&E

Additional Information: Site Plan provided below, provided that Seller shall have the right to provide an updated Site Plan at the time Seller provides an executed Construction Start Date certificate in the form of <u>Exhibit J</u> to Buyer.

Pelicans Jaw Solar, LLC

Site Plan



326

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Construction Start.

- a. "Construction Start" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits to begin the construction of the Facility, and execution of an engineering, procurement, and construction contract and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site ("Notice to Proceed"). The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "Construction Start Date." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of 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. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages in an amount equal to the product of (i) the number of days prior to the Guaranteed Construction Start Date, as extended, that Seller achieves Construction Start, times (ii) the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall also be refundable to Seller pursuant to Section 2(b) and 2(c) of this Exhibit B.
- Commercial Operation of the Facility. "Commercial Operation" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "COD Certificate"),
 (ii) Seller has notified Buyer in writing

that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing (or deemed to have acknowledged pursuant to Section 2.2) that Buyer agrees that

Commercial Operation has been achieved or Commercial Operation has otherwise been deemed to have been achieved pursuant to Section 2.2. The "<u>Commercial Operation</u> <u>Date</u>" 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 <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of <u>Exhibit B</u>. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.



Termination for Failure to Achieve 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.



- 4. Extension of the Guaranteed Dates. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.









EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this **Exhibit C**.

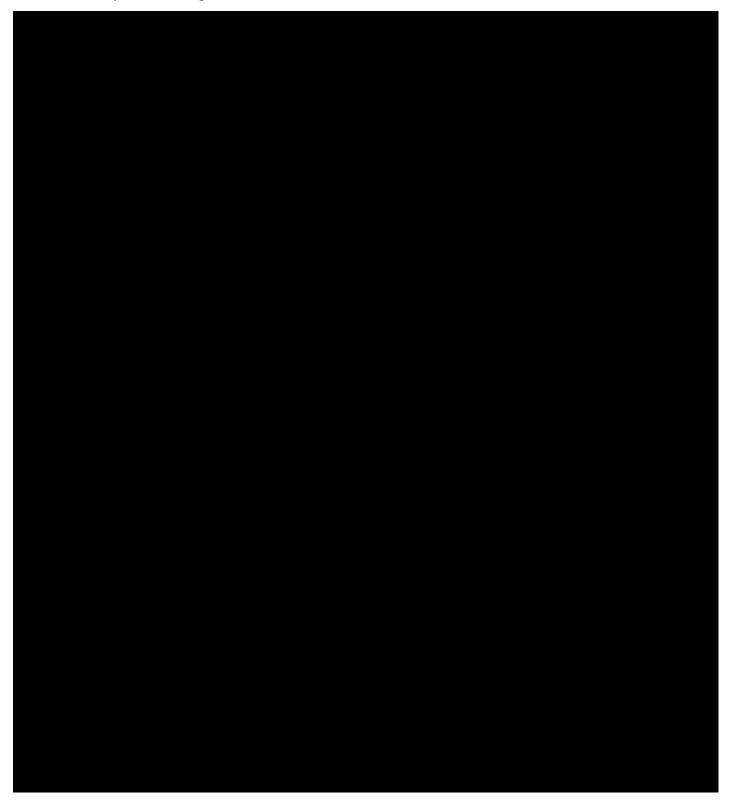






EXHIBIT D

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 (as applicable) of Test Energy, Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to the anticipated Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after the 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 (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteenminute market or real time basis, as determined by Buyer.
- (b) <u>Notices</u>. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.
- (c) <u>CAISO Costs and Revenues</u>. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy costs, penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all Non-Availability Charges (as defined in the CAISO Tariff) and similar charges assessed against Buyer (as Scheduling Coordinator for the Facility) based on the Facility's failure to meet performance obligations applicable to the Facility as a Resource Adequacy Resource; provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any such Non-Availability Charges (as defined in the CAISO Tariff) or similar charges are the responsibility of Seller and for Seller's account (except to the extent such Non-Availability Charges or similar charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the

Facility). In addition, if during the CAISO implements or has implemented any sanction or penalty related to outage reporting or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility (except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility).

CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for (d) all settlement functions with the CAISO related to the Facility with respect to the Delivery Term. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices for performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

- (e) <u>Dispute Costs</u>. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator for the Facility.
- (f) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (g) <u>Master File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File

and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) <u>NERC Reliability Standards</u>. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

- 1. Executive Summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Description of any material planned changes to the Facility or the Site.
- 5. Gantt chart schedule showing progress on achieving each of the Milestones.
- 6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 7. Forecast of activities scheduled for the current calendar quarter.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that are likely to potentially affect Seller's Milestones.
- 10. A specific section reporting on progress of completion of the Transmission Provider's upgrades and description of any known issues that are expected to result in a delay in completion of such upgrades.
- 11. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 12. Prevailing wage reports as required by Law.
- 13. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 15. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- **16.** Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
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 ac	dditiona	l rows fo	or each	day in th	ne montl	1]																		
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

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B - F) * (C - D)] - (E)$$

where:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{C} = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) MWh and (y) the market value of Replacement Green Attributes as reasonably determined by Buyer and Seller using broker market quotes

 \underline{D} = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in \$/MWh

 \underline{E} = The amount of GEP Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

 \underline{F} = The amount of Replacement Product in MWhs delivered by Seller for such Performance Measurement Period pursuant to Section 2 of this <u>Exhibit G</u>.

1. "<u>Adjusted Energy Production</u>" shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.

2. Replacement Product. Seller may, as an alternative to paying GEP Damages for a Performance Measurement Period, provide Replacement Product delivered to the PNode corresponding to the electric generating facility producing such Replacement Product (a) within the same Performance Measurement Period, or (b) within ninety (90) days after the conclusion of such Performance Measurement Period, but not later than the end of the calendar year in which such Performance Measurement Period ended; provided that any Replacement Product may not exceed of the Expected Energy for the last Contract Year of the applicable Performance Measurement Period. If Seller intends to provide Replacement Product for a Performance Measurement Period after the conclusion of such Performance Measurement Period, then Seller shall first provide Notice to Buyer of such intent. Buyer may request that Seller defer

delivery of such Replacement Product, and if the Parties mutually agree to such deferral, then notwithstanding the first sentence of this Section 2 of Exhibit G, Seller may deliver the Replacement Product during the calendar year following the calendar year in which such Performance Measurement Period ended. For all Replacement Product, on a day ahead basis, Seller shall provide a notice via e-mail to Buyer at PowerContracts@sdcommunitypower.org (or such other Buyer email address as Buyer may provide to Seller from time to time) identifying the electric generating facility(ies) that will provide Replacement Product for the following day and the volume of Replacement Product to be provided by each such facility, which may be expressed as a percentage of the applicable facility's output.

- as a percentage of the applicable facility is output.
- 3. No payment shall be due if the calculation of (a) (A B F), (b) (C D), or (c) [(A B F) * (C D)] (E), yields a negative number. Except as set forth in Section 2 of this Exhibit G with respect to Replacement Product, in no event will Buyer owe any payment to Seller pursuant to this Exhibit G.
- 4. Within one hundred twenty (120) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) one hundred fifty (150) days after each Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [LICENSED PROFESSIONAL ENGINEER] ("Engineer") to San Diego Community Power, a California joint powers authority ("Buyer") in accordance with the terms of that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [DATE] ("Agreement") by and between [SELLER] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [DATE], Engineer hereby certifies and represents to Buyer the following:

- 1. The Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- 2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
- 3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
- 4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
- 5. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.
- 6. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
- 7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

8.	Authorization to parallel the Facility was obtained from the Participating Transmission Owner on [DATE] .
9.	The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation [DATE] .

10. The CAISO has provided notification supporting Commercial Operation, in accordance

with the CAISO Tariff on[DATE]
the Full Network Model and has the ability	cility and the Storage Facility to be included in y to offer Bids into the CAISO Day-Ahead and he Generating Facility and Storage Facility.
	etered Station Use to the extent required in 's tariff, and any such meter(s) have the same or ler the retail service provider's tariff.
EXECUTED by [LICENSED PROFESSIONAL I	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 Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [DATE] ("Agreement") by and between [SELLER] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby	certify	the	follo	wing:
1 110100	o or orry		10110	

I nereby certify the following:	
(a) The performance test for the electrical output of MW AC at the Delivery Point date of the performance test ("Installed Generating	
(b) The Storage Capacity Test condependable operating capability that can be sustained electric energy of MW AC to the Delivery Point requirements and protocols set forth in Section 4. Capacity"); and	, in accordance with the testing procedures,
(c) The sum of (a) and (b) is MV	W AC and shall be the "Installed Capacity".
EXECUTED by [LICENSED PROFESSIONAL EN	GINEER]
this day of, 20	
<u>ן</u>	LICENSED PROFESSIONAL ENGINEER]
Ī	Ву:
I	Printed Name:
7	Гitle:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("<u>Certification</u>") is delivered by [SELLER ENTITY] ("<u>Seller</u>") to San Diego Community Power, a California joint powers authority ("<u>Buyer</u>") in accordance with the terms of that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated [<u>DATE</u>] ("<u>Agreement</u>") 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 <u>Exhibit B</u> 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 " <u>Construction Start Date</u> "); and
(3)	the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
	ITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as day of, 20
[SEL]	LER ENTITY]
Ву: _	
Printe	ed 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\$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power PO Box 12716 San Diego, CA 92112

Ladies and Gentlemen:

By the order of ______ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of San Diego Community Power, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated as of _____ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the

Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

This Letter of Credit may only be terminated upon sixty (60) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [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)

Drawi	ng Certificate
[Insert	Bank Name and Address]
Ladies	s and Gentlemen:
joint p	ndersigned, a duly authorized representative of San Diego Community Power, a California powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank (the "Bank") by order of (the "Applicant"), hereby certifies to the Bank as as:
1.	Applicant and Beneficiary are party to that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement dated as of, 20 (the "Agreement").
2.	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.
OR	
	Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.
3.	The undersigned is a duly authorized representative of San Diego Community Power and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.
	re hereby directed to make payment of the requested amount to San Diego Community by wire transfer in immediately available funds to the following account:
[Speci	fy account information]
San D	iego Community Power
Name	and Title of Authorized Representative
Date	

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and between [], a [] (" <u>Guarantor</u> "), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, " <u>Buyer</u> ").
Recitals
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Second Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [], 20
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's payment obligations under the PPA, as required by Section 8.8 of the PPA.

- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

- 1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Notwithstanding anything to the contrary in this Guaranty, the Guaranteed Amount shall in no circumstances exceed the amount of Seller's Performance Security under the PPA, provided that Seller shall remain subject to the replenishment obligation pursuant to Section 8.8 of the PPA following a draw of the Performance Security.
- 2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this

Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
- (i) the extension of time for the payment of any Guaranteed Amount (except any such extension provided by duly executed amendment to the PPA), or
 - (ii) any amendment, modification or other alteration of the PPA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its

obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA (except for any such defenses based on fraud by Buyer), or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA;

<u>provided</u> that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

- 4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- 5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at	[] Attn: [] Fax: []
If delivered to Guarantor, to it at	[] Attn: [] Fax: []

- 8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.
- 9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:
[]
By:
Printed Name:
Title:
BUYER:
By:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by [SELLER ENTITY] ("Seller") to
San Diego Community Power, a California joint powers authority ("Buyer") in accordance with
the terms of that certain Second Amended and Restated Renewable Power Purchase and Energy
Storage Service Agreement dated ("Agreement") by and between Seller and Buyer.
All capitalized terms used in this Notice but not otherwise defined herein shall have the respective
meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

	T
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		

 $^{^{\}mathbf{1}}$ To be repeated for each unit if more than one.

I	SEL	LER	EN	ΓΙΤΥ
- 1				

By:		
Printed Name:	 	
Title:		

EXHIBIT N

NOTICES

Pelicans Jaw Solar, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices:	All Notices:
Street: 3 Lagoon Dr., Suite 280	PO Box 12716
City: Redwood City, CA 94065	San Diego, CA 92112
Attn: SBE Legal, SBE Power Marketing	Attn: Chief Commercial Officer
	Phone: (619) 657-0422
Phone: 650-731-3262	Email:
Email: legalus@sbenergy.com,	PowerContracts@sdcommunitypower.org
powermarkets@sbenergy.com	750
Reference Numbers:	Reference Numbers:
Duns:	Duns:
Federal Tax ID Number:	Federal Tax ID Number:
Invoices:	Invoices:
Attn: SBE Asset Mgmt	Attn: SDCP Settlements
Phone: 650-443-7064	Phone: (619) 880-6545
Email: amus@sbenergy.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: SBE Asset Mgmt	Tenaska Power Services Co.
Phone: 650-443-7064	Attn: Kara Whillock
Email: amus@sbenergy.com	Phone: (972) 333-6122
5/	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
	Facsimile: (817) 303-1104
Confirmations:	Confirmations:
Attn: SBE Asset Mgmt	Attn: SDCP Settlements
Phone: 650-443-7064	Phone: (619) 880-6545
Email: amus@sbenergy.com	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: SBE Asset Mgmt	Attn: Michael Maher
Phone: 650-443-7064	Phone: (415) 526-3020
Email: amus@sbenergy.com	Email: mmaher@mahercpa.com
Wire Transfer:	Wire Transfer:
BNK: TBD	BNK:
ABA: TBD	ABA:
ACCT:TBD	ACCT:

Pelicans Jaw Solar, LLC	SAN DIEGO COMMUNITY POWER
("Seller")	("Buyer")
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Ryan Bates, VP General Counsel	
3 Lagoon Dr., Suite 280	Attn: SDCP General Counsel
Redwood City, CA 94065	PO Box 12716
Phone: (650) 731-3262	San Diego, CA 92112
	Phone:
Email: ryan@sbenergy.com,	Email: Legal@sdcommunitypower.org
legalus@sbenergy.com	
Emergency Contact:	Emergency Contact:
Attn: SBE Asset Mgmt	Attn: Chief Commercial Officer
Phone: 650-443-7064	Phone: (619) 657-0422
Email: amus@sbenergy.com	Email:
	PowerContracts@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. 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 Storage Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Storage Capacity Test(s).

- B. <u>Subsequent Storage Capacity Tests</u>. Following the fifteen (15) days in advance of the start 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 at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than five (5) Business 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 Contract Capacity determined pursuant to a Storage Capacity Test (in the case of the Storage Contract Capacity, up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Payment and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this <u>Exhibit O</u>. For ease of reference, a Storage Capacity Test is sometimes referred to in this <u>Exhibit O</u> as a "SCT". Buyer or its representative may be present

for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the initial Storage Contract Capacity of 238.5 MW; provided, for all purposes of this Agreement, the amount of Storage Contract Capacity shall never be deemed to exceed 238.5 MW.

A. <u>Purpose of Test</u>. Each SCT shall:

- (1) Determine an updated Storage Contract Capacity;
- (2) Determine the amount of Energy required to fully charge the Storage Facility;
- (3) Determine the Storage Facility charge Ramp Rate;
- (4) Determine the Storage Facility discharge Ramp Rate; and
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("Energy In");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("Energy Out");
- Electrical output at maximum discharging capacity at the Storage Facility Meter (MW);
- Electrical input at maximum charging capacity at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to maximum discharging capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to maximum charging capacity;

- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level.
- C. <u>Parameters</u>. 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. <u>Site Conditions</u>. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air Temperature (°F).

E. Test Conditions.

- (i) <u>General</u>. 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) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
- (iii) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. <u>Incomplete Test</u>. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the

Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

- G. <u>Final Report</u>. 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, 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.

- H. 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 (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under Section 5 of Exhibit B, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and

shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

J. Adjustment to Efficiency Rate.

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under <u>Exhibit C</u> until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Initial Supplementary Storage Capacity Test Protocol

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

• Procedure:

- (1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.
- (2) Record the initial value of the Storage Facility State-of-Charge ("SOC").
- (3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the maximum SOC allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.
- (4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter at the Storage Facility Metering Point associated with Charging Energy ("Energy In"). All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy In.
- (5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging level is at least 2% less than the Maximum Discharging Capacity.

- (6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.
- (7) Record and store the AC Energy charged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Efficiency Rate.
- (8) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.
- (9) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Metering Points. "Energy Out" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.

• Test Results:

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.
- (2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

ANNUAL STORAGE AVAILABILITY CALCULATION

Seller shall calculate the "<u>Annual Storage Availability</u>" for a given Contract Year of the Delivery Term using the formula set forth below:

Where:

y = relevant Contract Year "y" in which Annual Storage Availability is calculated;

YRHRS_m is the total number of hours for the relevant Contract Year;

AVAILHRS_m is the total number of hours, or partial hours, in the Contract Year during which the Storage Facility was available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller's delivery of Product). If the Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Storage Contract Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such Storage Capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller's most recent Storage Facility availability Notice, and (b) is the Storage Contract Capacity; and

EXCUSEDHRS_m is the total number of hours, or partial hours, in the Contract Year that are not included as AVAILHRS_m due to Force Majeure Events (excluding Insurable Force Majeure Events), Curtailment Orders, Buyer Curtailment Orders, System Emergencies, Buyer Dispatched Tests, or the Operating Restrictions in Exhibit Q (each, an "Excused Event"). If an Excused Event results in less than the full amount of the Storage Contract Capacity for the Storage Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_m for such time period shall be calculated by multiplying such EXCUSEDHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such Storage Contract Capacity amount that is not reported as available by Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller's most recent Storage Facility availability Notice, and (b) is the Storage Contract Capacity. For avoidance of doubt, the total of AVAILHRS_m plus EXCUSEDHRS_m for any hour, or partial hour, shall never exceed 1.

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.

<u>Availability Adjustment.</u> If the Annual Storage Availability during any Contract Year of the Delivery Term is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment for such Contract Year, where "<u>Availability Adjustment Payment</u>" means an amount equal to the product of (a) the sum of the Storage Payments for the months in such Contract Year, multiplied by (b) the Availability Adjustment for such Contract Year.



EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	1			
Technology:	Photovoltaic and Lithium-ion Battery Energy Storage			
Storage Unit Name:	Pelicans Jaw			
A. Contract Capacity	7			
Initial Storage Contract Capacity (MW):		238.5 MW		
Current Storage Contract Capacity (MW):		As determined by most recent		
	1 10 10 10 10 10 10 10 10 10 10 10 10 10	Storage Capacity Test		
B. Total Unit Dispatchable Range Information				
Interconnect Voltage (kV)		230 kV		
Maximum State of Charge (SOC) during Charging		100%		
Minimum State of Charge (SOC) during Discharging		0%		
Maximum Stored Energy Level (MWh):		954 MWh		
Of September 198 Or Addison Street, September 1989				
Minimum Stored Energy Level (MWh):		0 MWh		
Maximum Charging Capacity	(MW):	238.5 MW		
Mariana Diakania Cara	A CAMPAN	238.5 MW		
Maximum Discharging Capac	ity (MW):	238.3 MW		
C. Maximum Throug	hput			
Maximum Daily Throughput:		954 MWh		
and the state of t				
Maximum Annual Throughput:		348,210 MWh		
		6.		
D. Charge and Disch	arge Kates	197002 00000 V2		
		Ramp Rate (MW/minute) Description		
Energy		20 MW/minute		
E. Ancillary Services				
Spinning reserve is included:	Yes			
Non-spinning reserve is included:		Yes		

Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	No
Voltage support is included:	No
F. Other Restrictions	
YTD Charging Energy Source Limitations	

EXHIBIT R METERING DIAGRAM

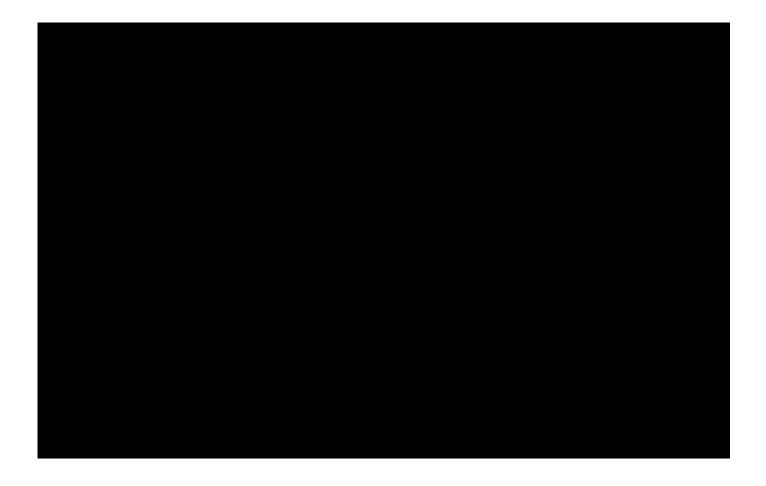


EXHIBIT S

WORKFORCE DEVELOPMENT

Sample Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.
*Required
1. Business Name*
2. Email Address*
3. Where is your business located/headquartered?
4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com.*
Yes
No
Qualified as a WMDVLGBTBE but not GO 156 certified
5. If you answered "yes" to Question 4, when does your certification expire?
6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.
Minority Owned
Women Owned
LGBT Owned
Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

- 8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the "Commodity Codes" search bar, here: https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory. asp.
- 9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: https://sch.thesupplierclearinghouse.com/ FrontEnd/SearchCertifiedDirectory.asp.
- 10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?
- 11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.
- 12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.
- 13. Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP's service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

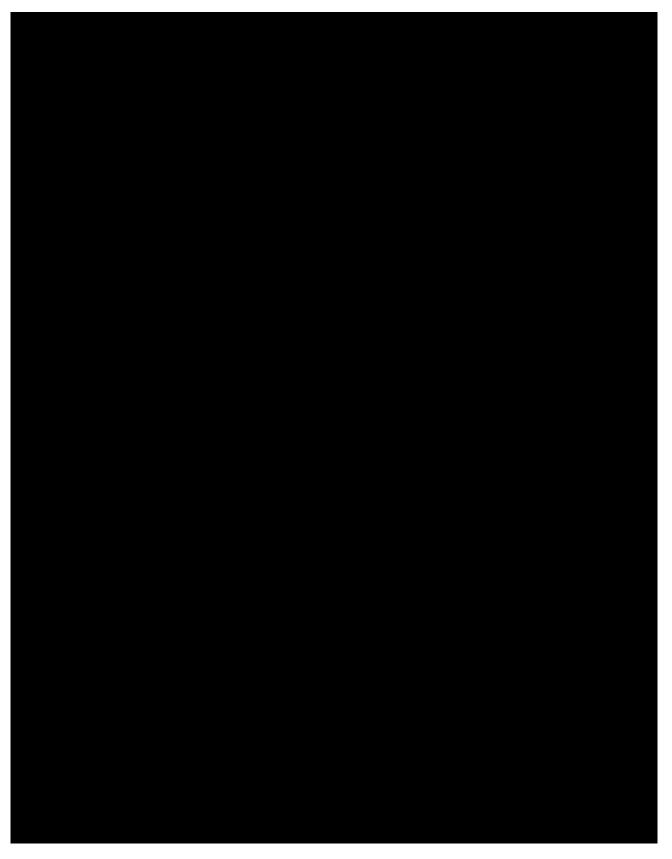
14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: https://www.sba.gov/sizestandards.

Yes

No

- 15. If you answered "yes" to Question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.
- 16. Is there any additional feedback that you would like to provide to SDCP at this time?
- 17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?
- 18. If the answer to question 33 is "Yes", please explain and provide supporting documentation.
- 19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?
- 20. If the answer to question 36 is "Yes", please explain and provide supporting documentation.

EXHIBIT T



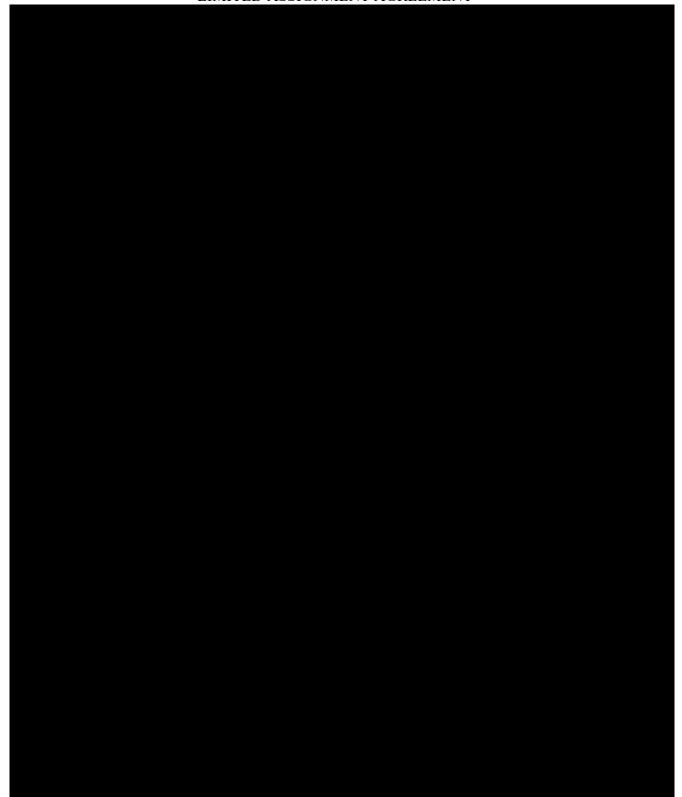


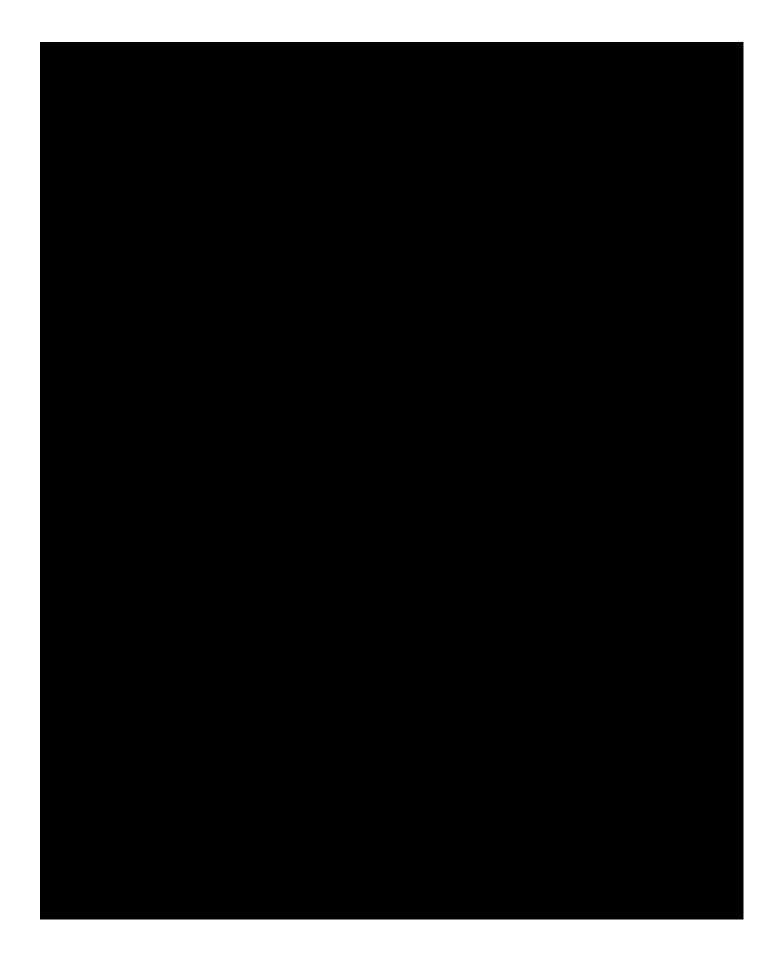
EXHIB	IT U

EXHIBIT V

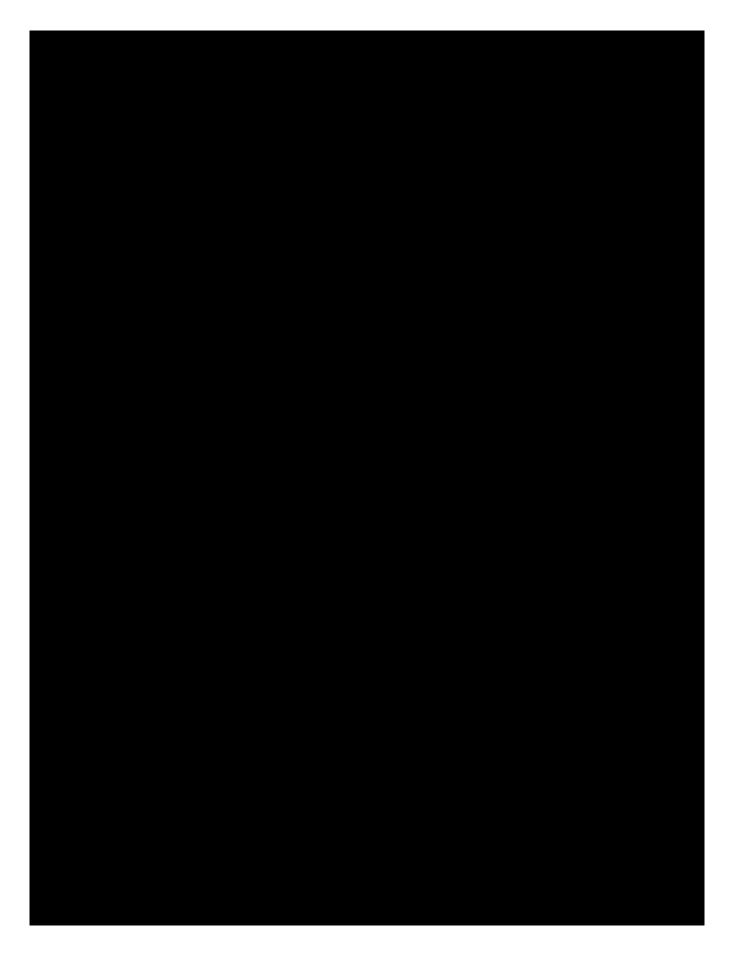
FORM OF LIMITED ASSIGNMENT AGREEMENT

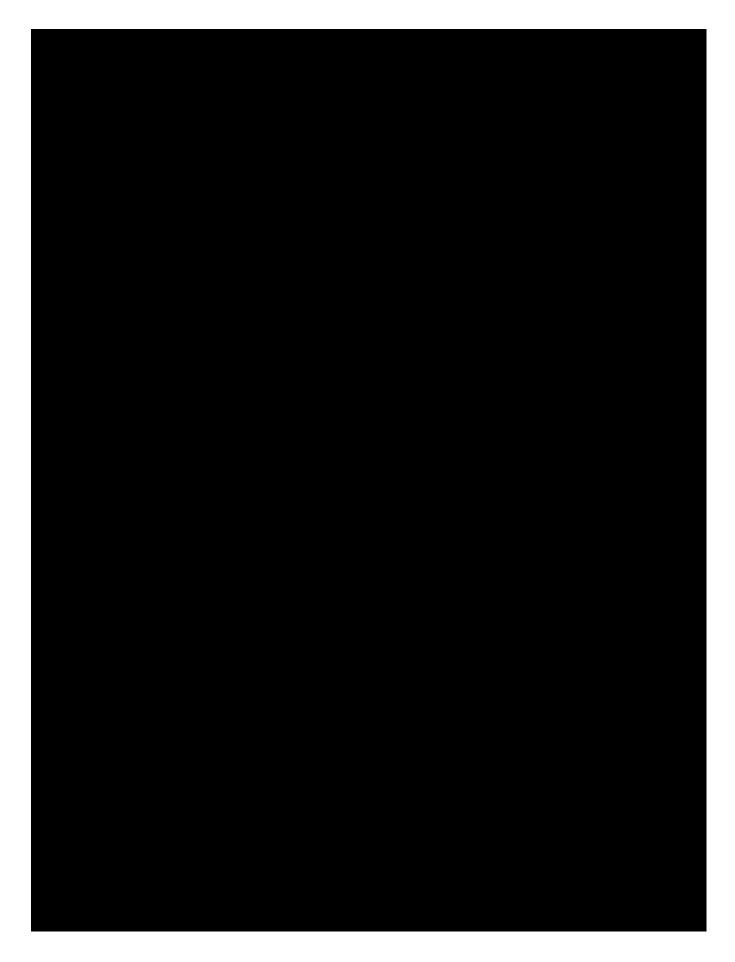
LIMITED ASSIGNMENT AGREEMENT

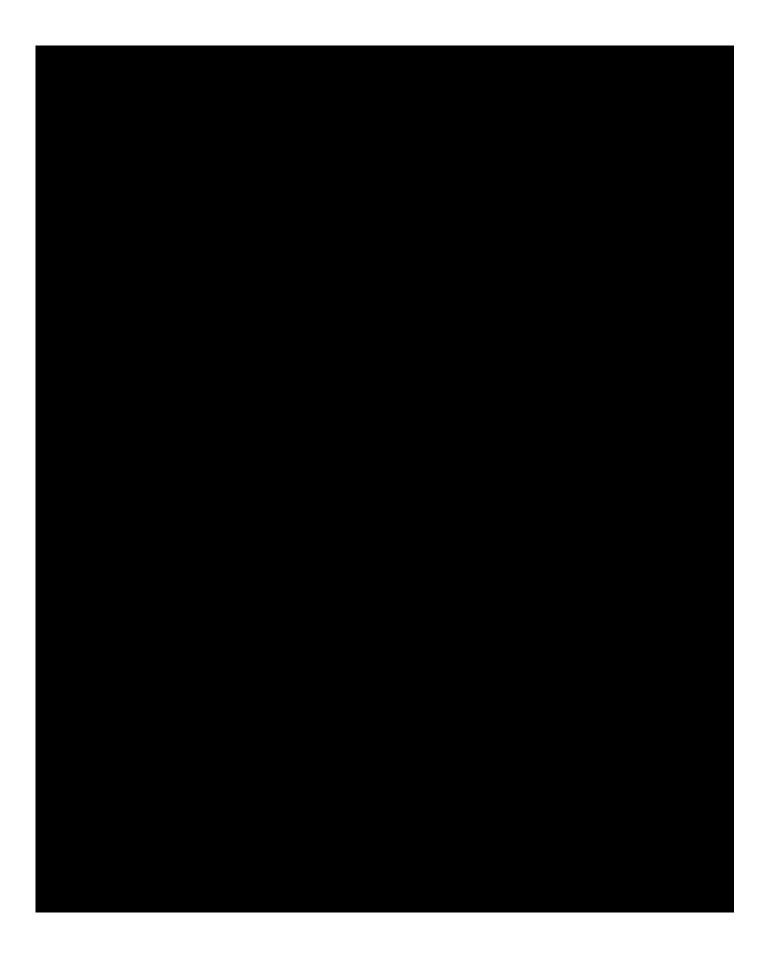


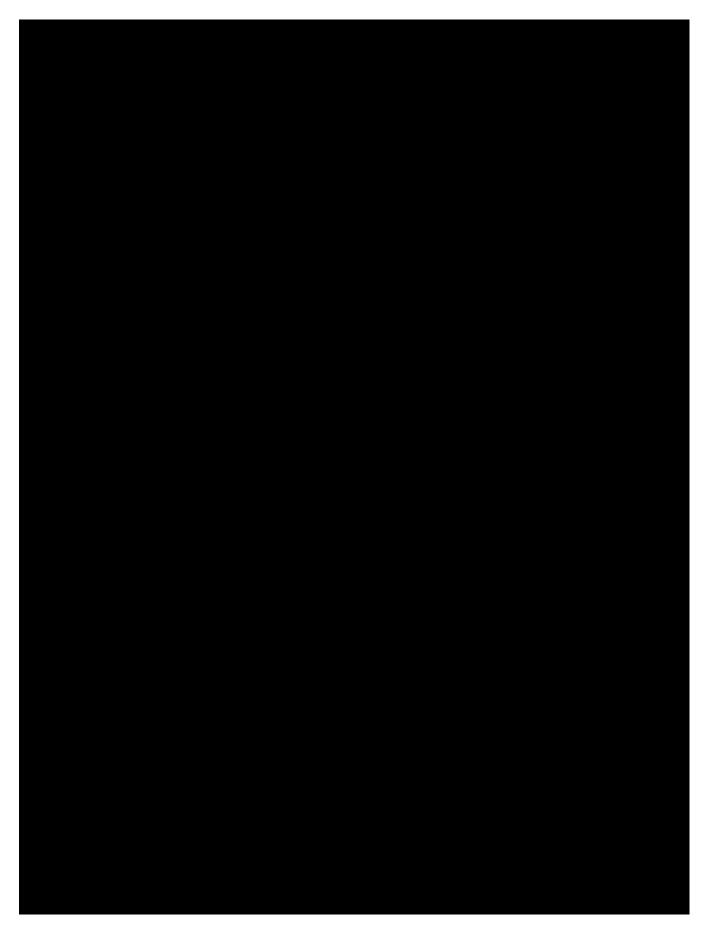


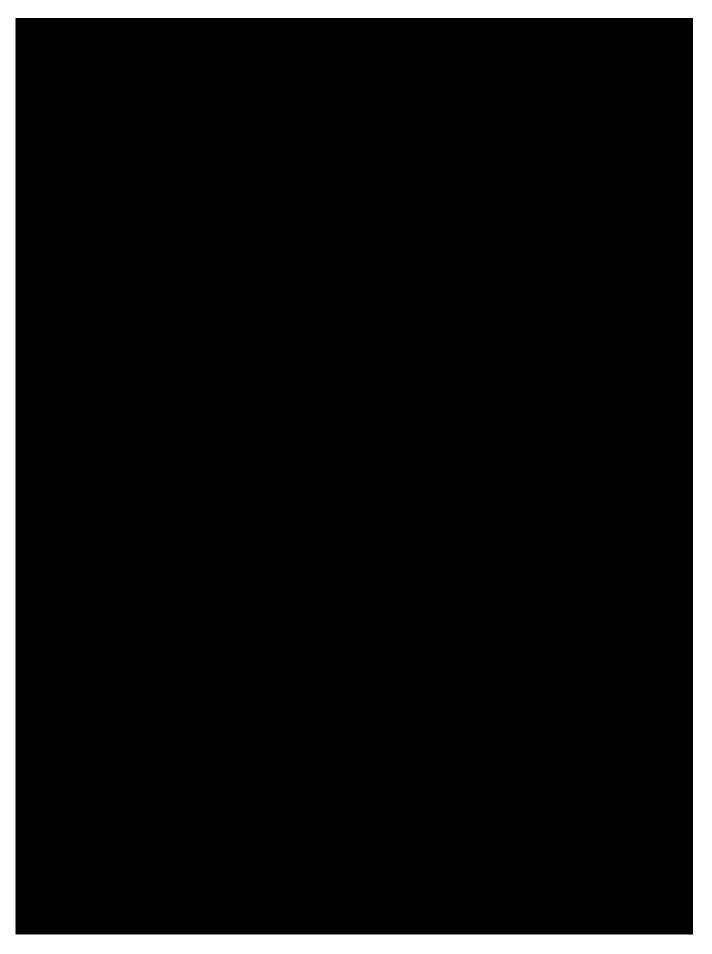




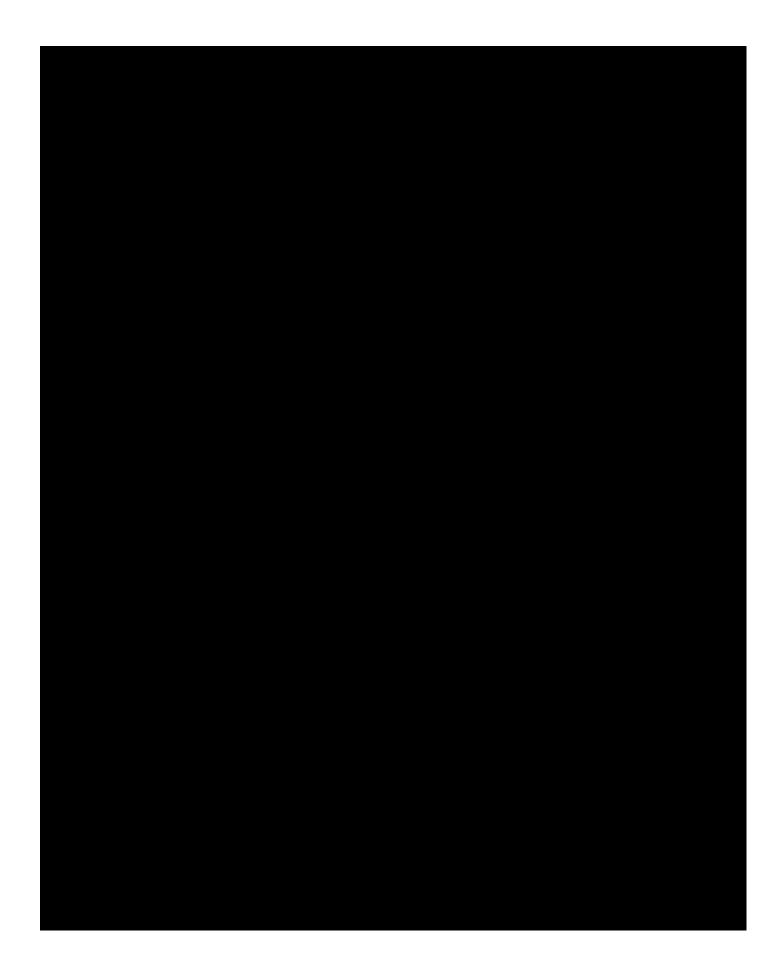








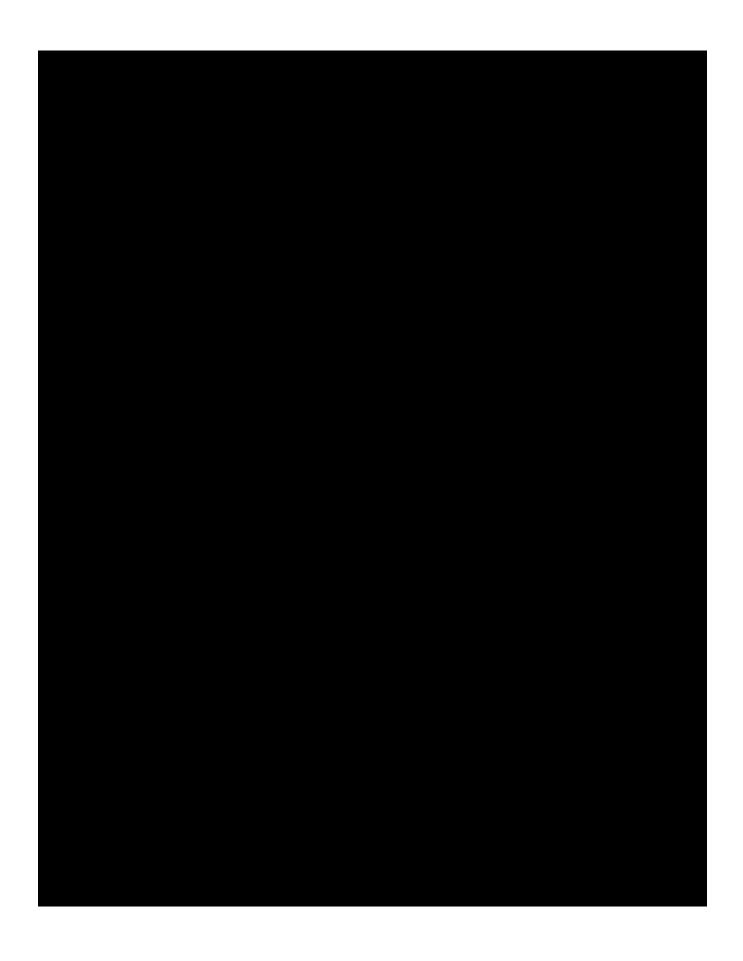


















SAN DIEGO COMMUNITY POWER Staff Report – Item 13

TO: Board of Directors

FROM: Kenny Key, Director of Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Amended and Restated Power Purchase Agreement with

Noble Solar, LLC

DATE: May 22, 2025

RECOMMENDATION:

Approve the proposed Second Amended and Restated Power Purchase Agreement ("A&R PPA") with Noble Solar, LLC to amend the Commercial Operation Date ("COD"), increase the security and pre-COD liabilities, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

BACKGROUND:

As San Diego Community Power (Community Power) 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 Community Power 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 Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power can develop its pro forma financial model.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that Community Power 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, Community Power has established a procurement target of 100% renewable by 2035.

In February 2024, Community Power's Board of Directors approved a PPA 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 Community Power issued in October 2022.

Recently, the project was impacted by federal legislation and impacts on BLM permitting. Community Power and Primergy worked together to evaluate options to keep the project viable and agreed to the term of the A&R PPA.

ANALYSIS AND DISCUSSION:

Staff negotiated the attached A&R 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 Community Power's power supply. Further, while Community Power is increasing efforts to target and encourage local project development for Community Power's generation portfolio, Community Power 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
- Original 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
- Community Power 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.
- · Battery safety:
 - UL1973 (Battery safety)
 - UL9540A (Thermal runaway and fire propagation test)
 - IEC62619 (Safety for secondary lithium cells)
 - UN38.3 (Transportation safety)
 - EMC Compliance: EN61000-6-4, EN61000-6-2
 - Ingress Protection: IP55 for the container

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 6 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 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 \$2,000,000 to a community benefit fund to benefit Community Power customers.

Scope of Amendment:

- Adjust Guaranteed Commercial Operations Date from 6/30/27 to 6/1/2028
- Increase security requirements and pre-COD liabilities
- Update resource adequacy terms to account for slice of day regulations
- Update several commercial terms for clarity and consistency with Community Power's current pro-forma

COMMITTEE REVIEW:

In Q4 2024 the ECWG reviewed the A&R PPA for the project and recommended staff to move forward with the execution of this A&R PPA.

FISCAL IMPACT:

The competitive energy and capacity pricing of the PPA are confidential, but the long-term purchase of renewable energy and capacity will provide Community Power with significant value and cost certainty over the term of this PPA.

ATTACHMENTS:

A: Amended and Restated Power Purchase Agreement with Noble Solar, LLC

ITEM 13 ATTACHMENT A

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT COVER SHEET

<u>Seller</u>: Noble Solar LLC, a California limited liability company ("<u>Seller</u>")

Buyer: San Diego Community Power, a California joint powers authority ("Buyer")

<u>Description of Facility</u>: 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 <u>Exhibit A</u>.

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 Delivery Network Upgrade Completion Date	
Completion of Interconnection Upgrades Deadline	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	06/01/2028

Delivery Term: Twenty (20) Contract Years

Expected Energy:

Contract Year	Expected Energy (MWh)		
1			
2			
3			

4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

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:

Guaranteed Efficiency Rate:

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

		_
12		
13		
14		
15		
16		
17		
18		
19		
20		

Minimum Efficiency Ra	te:
------------------------------	-----

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 - 20	

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	

Product:

\square	Genera	tino	Faci	litx	Energy
\sim	Ochicia	une	raci.	IILV	EHCIEV

□ Discharging Energy

☑ Green Attributes (Portfolio Content Category 1)

☐ Capacity Attributes (select options below as applicable)

☐ Energy Only Status

Scheduling Coordinator: Buyer/Buyer Third Party

Security:

Development Security:

Performance Security:

ARTICLE 1	DEFINITIONS	1
1.1	Contract Definitions	1
1.2	Rules of Interpretation	29
ARTICLE 2	TERM; CONDITIONS PRECEDENT	30
2.1	Contract Term.	
2.1	Conditions Precedent	
2.3	Development; Construction; Progress Reports	
2.4	Remedial Action Plan	
	PURCHASE AND SALE	
	Purchase and Sale of Product	
3.1 3.2	Sale of Green Attributes.	
3.3	Imbalance Energy.	
3.4	Ownership of Renewable Energy Incentives	
3.5	Future Environmental Attributes.	
3.6	Test Energy.	
3.7	Capacity Attributes	
3.8	Resource Adequacy Failure	
3.9	CEC Certification and Verification.	
3.10	[Reserved]	
3.11	California Renewables Portfolio Standard	
3.12	Compliance Expenditure Cap	35
3.13	Project Configuration	37
ARTICLE 4	OBLIGATIONS AND DELIVERIES	37
4.1	Delivery	37
4.2	Title and Risk of Loss.	
4.3	Forecasting	
4.4	Dispatch Down/Curtailment.	
4.5	Charging Energy Management	41
4.6	Reduction in Energy Delivery Obligation	44
4.7	Guaranteed Energy Production	44
4.8	Storage Availability and Efficiency Rate	
4.9	Storage Capacity Tests	
4.10	WREGIS	
4.11	Interconnection	
4.12	Green-E Listing	48
ARTICLE 5	TAXES	48
5.1	Allocation of Taxes and Charges	48
5.2	Cooperation	48
ARTICLE 6	MAINTENANCE OF THE FACILITY	48
6.1	Maintenance of the Facility	48
6.2	Maintenance of Health and Safety.	
6.3	Shared Facilities.	

ARTICLE 7	METERING	49
7.1	Metering	49
7.2	Meter Verification	
ARTICLE 8	INVOICING AND PAYMENT; CREDIT	51
8.1	Invoicing	51
8.2	Payment.	
8.3	Books and Records	51
8.4	Payment Adjustments	52
8.5	Billing Disputes	
8.6	Netting of Payments	
8.7	Seller's Development Security.	
8.8	Seller's Performance Security.	
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	
8.10 8.11	Buyer Credit Requirements Buyer Reporting Requirements	
ARTICLE 9	NOTICES	56
9.1	Notices.	56
ARTICLE 1	D FORCE MAJEURE	56
10.1	Definition.	56
10.2	Termination Following Force Majeure Event	57
10.3	Notice for Force Majeure Event.	
10.4	No Liability If a Force Majeure Event Occurs	58
ARTICLE 1	DEFAULTS; REMEDIES; TERMINATION	58
11.1	Events of Default	58
11.2	Remedies; Declaration of Early Termination Date.	62
11.3	Termination Payment	
11.4	Notice of Payment of Termination Payment or Damage Payment	
11.5	Disputes With Respect to Termination Payment or Damage Payment	64
11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales	<i>C</i> 4
11.7	from the Facility after Early Termination Date	
11.7 11.8	Rights And Remedies Are Cumulative	
11.8	Mitigation	04
ARTICLE 1	2 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	65
12.1 12.2	No Consequential DamagesWaiver and Exclusion of Other Damages	
ARTICLE 1	3 REPRESENTATIONS AND WARRANTIES; AUTHORITY	66
13.1	Seller's Representations and Warranties	
13.2	Buyer's Representations and Warranties	
13.3	General Covenants	
13.4	Prevailing Wage	

13.5	Workforce Development and Supplier Diversity	68
13.6	Community Benefits	68
ARTICLE 1	4 ASSIGNMENT	69
14.1	General Prohibition on Assignments	69
14.2	Collateral Assignment	
14.3	Permitted Assignment by Seller	
14.4	Permitted Assignment by Buyer	
14.5	Right of First Refusal as to Future Phases, Additional Projects,	
	Addition of Storage Capacity	72
ARTICLE 1	5 DISPUTE RESOLUTION	73
15.1	Governing Law	73
15.2	Dispute Resolution.	
ADTICLE 1	6 INDEMNIFICATION	
16.1	Indemnity	
16.2	Claims	74
ARTICLE 1	7 INSURANCE	74
17.1	Insurance	74
ARTICLE 1	8 CONFIDENTIAL INFORMATION	76
18.1	Definition of Confidential Information	76
18.2	Duty to Maintain Confidentiality	76
18.3	Irreparable Injury; Remedies	
18.4	Disclosure to Lenders, Etc.	77
18.5	Press Releases	77
ARTICLE 1	9 MISCELLANEOUS	77
19.1	Entire Agreement; Integration; Exhibits	77
19.2	Amendments	
19.3	No Waiver	78
19.4	No Agency, Partnership, Joint Venture or Lease	78
19.5	Severability	
19.6	Mobile-Sierra	
19.7	Counterparts	
19.8	Electronic Delivery	
19.9	Binding Effect	
19.10	No Recourse to Members of Buyer	/8
19.12	Forward Contract	70
19.12		
19.13		
19.15		
17.10		

Exhibits:	
Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F-1	Average Expected Energy
Exhibit F-2	Available Capacity
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	[RESERVED]
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests
Exhibit P	Monthly/ Storage Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram, Method of Data Delivery, Data Points
Exhibit S	Workforce Development

Exhibit U Form of Limited Assignment Agreement

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement ("<u>Agreement</u>") is entered into as of ______, 2025 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Buyer and Seller entered into that certain Renewable Power Purchase Agreement, dated as of March 15, 2024 (the "Original Agreement");

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

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 <u>Contract Definitions</u>. 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.
- "<u>Agreement</u>" 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 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.

"<u>Approved Forecast Vendor</u>" 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"

"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.

"<u>Business Day</u>" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT) for the Party sending a Notice, or payment, or performing a specified action.

"Buyer" means San Diego Community Power, a California joint powers authority.

"Buyer Bid Curtailment" means the occurrence of both of the following:

- (a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time;
- (b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:
- (i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or
- (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or
- (iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

If the Generating Facility is

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

"Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce Generating Facility Energy by the amount, and for the period of time set forth in such instruction,

for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"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 any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

"Buyer's WREGIS Account" has the meaning set forth in Section 4.10(a).

"<u>CAISO</u>" 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.

"<u>CAISO Operating Order</u>" 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 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.

"<u>CEC</u>" 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.

"<u>CEC Precertification</u>" means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"CEQA" means the California Environmental Quality Act.

"Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, 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.

"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.

"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.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2.

"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"

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

- "Compliance Action" has the meaning set forth in Section 3.12(b).
- "Compliance Expenditure Cap" has the meaning set forth in Section 3.12(b).
- "Confidential Information" has the meaning set forth in Section 18.1.

"Construction Delay Damages" means an amount equal to (a) the Development Security amount

- "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, and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.
- "Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.
- "CPM Soft Offer Cap" has the meaning set forth in 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;

"Credit Rating" means, with respect to any entity, the publicly available or private 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.
- "<u>Curtailment Period</u>" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order;

provided, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Damage Payment"

"<u>Day-Ahead Forecast</u>" 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.

"<u>Dedicated Interconnection Capacity</u>" 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 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.

"<u>Delivery Point</u>" has the meaning set forth in <u>Exhibit A</u> with the location shown on <u>Exhibit R</u>.

"<u>Delivery Term</u>" 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.

"<u>Development Security</u>" means (i) cash (and or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet;

"<u>Discharging Energy</u>" 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,

"Disclosing Party" has the meaning set forth in Section 18.2.

"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.

"<u>Electrical Losses</u>" 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.

- "<u>Eligible Intermittent Resource Protocol</u>" 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 Delivery Network Upgrade Completion 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, 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.

"Facility" means the Generating Facility and the Storage Facility.

"<u>Facility Energy</u>" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Financial Close</u>" 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).

"<u>Flexible Capacity</u>" 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.

"<u>Forced Facility Outage</u>" 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 that become recognized under applicable Law after the Effective Date other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Generating Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) Renewable Energy Incentives, 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.

"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, or any Renewable Energy Incentives, (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. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

"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.

"<u>Guaranteed Capacity</u>" means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

"Guaranteed Efficiency Rate" means 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 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 and the Resource Duration, 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 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.



[&]quot;Indemnifiable Losses" has the meaning set forth in Section 16.1(a).

"<u>Initial Synchronization</u>" means the initial delivery of Facility Energy to the Delivery Point.

[&]quot;Indemnified Party" has the meaning set forth in Section 16.1(a).

[&]quot;Indemnifying Party" has the meaning set forth in Section 16.1(a).

"Installed Battery Capacity" means the maximum dependable operating capability of the Storage Facility to discharge Energy for the Resource Duration 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 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, and unavailability of, the Facility, and (b) occurs prior to the Delivery
Point;

"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 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.

"<u>Interconnection Point</u>" means the point at which Seller's Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in <u>Exhibit A</u>.

"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.

"<u>ITC</u>" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986, as amended.

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"kW" means a kilowatt.

"<u>Law</u>" 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.

"Lender" means, collectively, any Person (i) providing senior or subordinated construction, interim, letter of credit, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback, pass-through lease or leveraged leasing structure) with respect to the Facility.

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's in a form substantially similar to the letter of credit set forth in Exhibit K.

"<u>Licensed Professional Engineer</u>" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California or the State of Nevada.

"Limited Assignee" has the meaning set forth in Section 14.4.

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

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to 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

"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, ure, 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).



"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.
- "<u>Maximum State of Charge</u>" means the maximum State of Charge to which the Storage Facility may be charged, as set forth in <u>Exhibit Q</u>.
- "<u>Maximum Stored Energy Level</u>" 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.
- "<u>Milestones</u>" 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 O.
- "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.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "<u>Negative LMP</u>" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than Zero dollars (\$0).
- "<u>NERC</u>" 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).

"<u>Operating Procedures</u>" or "<u>Operating Restrictions</u>" means those rules, requirements, and procedures set forth on <u>Exhibit Q</u>.

"Original Agreement" has the meaning set forth in the Recitals.

"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	and/or (ii) a Letter of Credit,
in the amount set forth on the Cover Sheet;	

"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 and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities or similar to the Facility, or has retained a third-party with such experience to operate the Facility;

"Person" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

"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.

"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.

"<u>PTC</u>" 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 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.

"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"

"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 MWac/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.

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

"Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"Renewable Energy Incentives" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production 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 in an amount

"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 the same Slice-of-Day (as that term is defined in the Resource Adequacy Rulings) generation profile and related characteristics, and 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.

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

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

"<u>Resource Duration</u>" means four (4) continuous hours of discharge as set forth on the Cover Sheet.

"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).

"<u>S&P</u>" 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.

"Saggetty Intercest" has the magning set fouth in Section 20

"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.

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

"<u>Site Control</u>" 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.

"SOMD Plan" has the meaning set forth in the CAISO Tariff.

"<u>State of Charge</u>" or "<u>SOC</u>" 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; provided, Station Use shall not include Electrical Losses (including transformation losses in the transformer) that exist (a) between the Generating Facility Meter and the Delivery Point, (b) between the Storage Facility Meter and the Delivery Point, and (c) between the Generating Facility Meter and the Storage Facility Meter.

"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 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.

"<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Tax Credits</u>" 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.

"<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2(a).

"Termination Payment" has the meaning set forth in Section 11.3.

"<u>Test Energy</u>" 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).

"<u>Transmission Provider</u>" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"<u>Transmission System</u>" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"<u>Ultimate Parent</u>" 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.

"<u>WREGIS</u>" 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).

- "<u>WREGIS Certificates</u>" 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.
- "<u>WREGIS Operating Rules</u>" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.
- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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

each of the following conditions:

- (a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit H</u> and (ii) a certificate from a Licensed Professional Engineer substantially in the form of <u>Exhibit I</u> setting forth the Installed Capacity on the Commercial Operation Date;
- (b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;
- (c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

- (d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;
- (e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);
- (f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation;
- (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 Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90) day period following 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

- 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 <u>Sale of Green Attributes</u>. 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 <u>Imbalance Energy</u>. 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 <u>Ownership of Renewable Energy Incentives</u>. 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.

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 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.



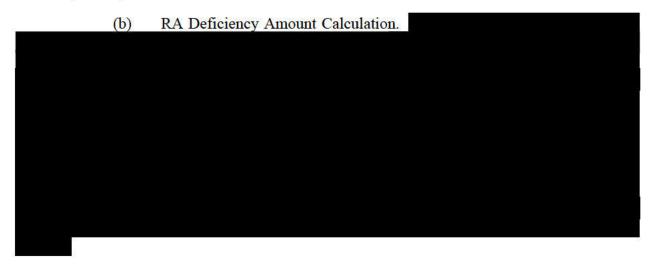
- 3.7 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status for the Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.
- (a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all available Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all available Resource Adequacy Benefits from the Facility to Buyer.

(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.

3.8 Resource Adequacy Failure.

(a) <u>RA Deficiency Determination</u>. 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.



(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.

3.9 <u>CEC Certification and Verification</u>. 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.

- (a) <u>Eligibility</u>. 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) <u>Transfer of Renewable Energy Credits</u>. 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) <u>Tracking of RECs in WREGIS</u>. 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 <u>Section 3.12</u>.

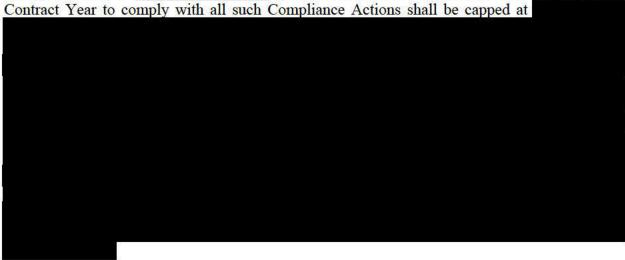
3.12 <u>Compliance Expenditure Cap.</u>

(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 or the Facility or incur any costs or liabilities, 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.

(b) If a Change in Law has increased or is reasonably expected to increase Seller's known or reasonably expected costs

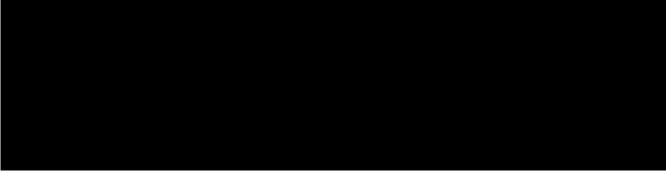
to (A) cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be RPS compliant or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, (B) comply with its obligations under Section 4.10, (C) obtain, maintain, convey 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



- (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 "<u>Accepted Compliance Costs</u>"), 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) <u>Green Attributes</u>. 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.

(a)	Energy. Title to an	nd risk of loss of the	Generating Facility	Energy shall pass
and transfer from Sell	er to Buyer at the C	Generating Facility	Metering Point;	

Risk of loss of the Discharging Energy, excluding Generating Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

- (b) <u>Green Attributes</u>. 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) <u>Annual Forecast of Energy</u>. 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 <u>Exhibit F-1</u>, or as reasonably requested by Buyer.
- (b) <u>Monthly Forecast of Energy and Available Generating Capacity</u>. 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 <u>Exhibit F-2</u> ("<u>Monthly Delivery Forecast</u>").
- (c) <u>Day-Ahead Forecast</u>. 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 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.
- Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer (d) and the SC (if applicable) of any changes from the Day-Ahead Forecast of 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 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) <u>Forced Facility Outages.</u> 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) <u>Forecasting Penalties</u>. 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) <u>CAISO Tariff Requirements</u>. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 <u>Dispatch Down/Curtailment</u>.

- (a) <u>General</u>. 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) <u>Buyer Curtailment.</u> 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) <u>Seller Equipment Required for Curtailment Instruction Communications</u>. 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 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) <u>Charging Notices</u>. 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) <u>No Unauthorized Charging</u>. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice

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;

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 (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) <u>Discharging Notices</u>. 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.
- 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, (v) 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) <u>Curtailments</u>. 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.

Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, and (iii) all CAISO costs, revenues, 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.



(i) <u>Requirements for Charging and Discharging Notices</u>. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(j) <u>Priority of CAISO Dispatches</u>. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC,

4.6 <u>Reduction in Energy Delivery Obligation</u>. Without limiting Section 3.1 or <u>Exhibit G</u>, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

- Facility Maintenance. Subject to providing Buyer one-hundred twenty (a) (120) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff, and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including the cost of any replacement Capacity Attributes as required by the CAISO). During the during the Delivery Term, Seller shall not schedule any nonperiod from emergency maintenance that reduces the energy generation capability of the Generating Facility unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by Law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, (v) such outage is required in accordance with Prudent Operating Practices or (vi) the Parties agree otherwise in writing.
- (b) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event.</u> 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) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
- 4.7 <u>Guaranteed Energy Production</u>. 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	ar	nount in any	Perf	ormance	Me	asureme	ent Per	riod, Sel	ller	shall	pay	Buyer	damages
calculated	in	accordance	with	Exhibit	G	("GEP	Dama	ages");					
		89								· ·	· ·	·	

4.8 Storage Availability and Efficiency Rate.

- (a) During the Delivery Term, the Storage Facility shall maintain Storage Availability during each month of no less than the Guaranteed Storage Availability, which 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),
- (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 <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests, including retests, in accordance with <u>Exhibit O</u>.
- (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 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 during a Buyer Dispatched Test. Buyer shall be responsible for all costs, expenses, and fees payable or reimbursable to its representative(s) witnessing any Facility test. 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 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 <u>WREGIS</u>. 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.
- (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 <u>Interconnection</u>. 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 <u>Green-E Listing</u>. Upon request of Buyer, Seller shall submit a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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

- 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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.
- 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.

Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for 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**.

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 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 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 <u>Meter Verification</u>. 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

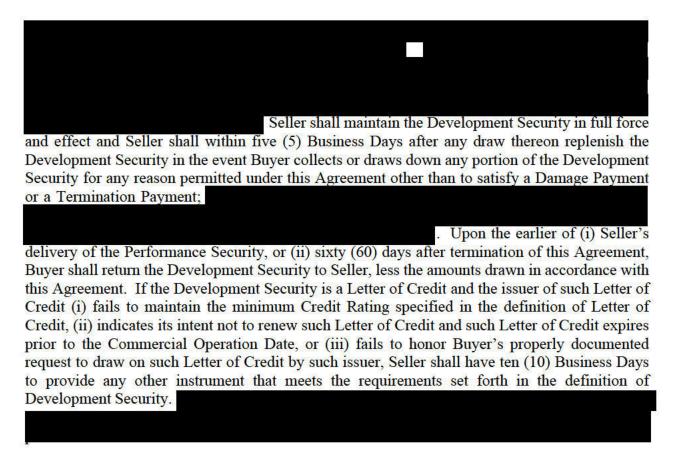
commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such 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 <u>Books and Records</u>. 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 or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

- 8.4 **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.
- 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 days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.
- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B 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 <u>Seller's Development Security</u>. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date.



8.8 <u>Seller's Performance Security</u>. 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,

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 to provide any other instrument that meets the requirements set forth in the definition of Performance Security.

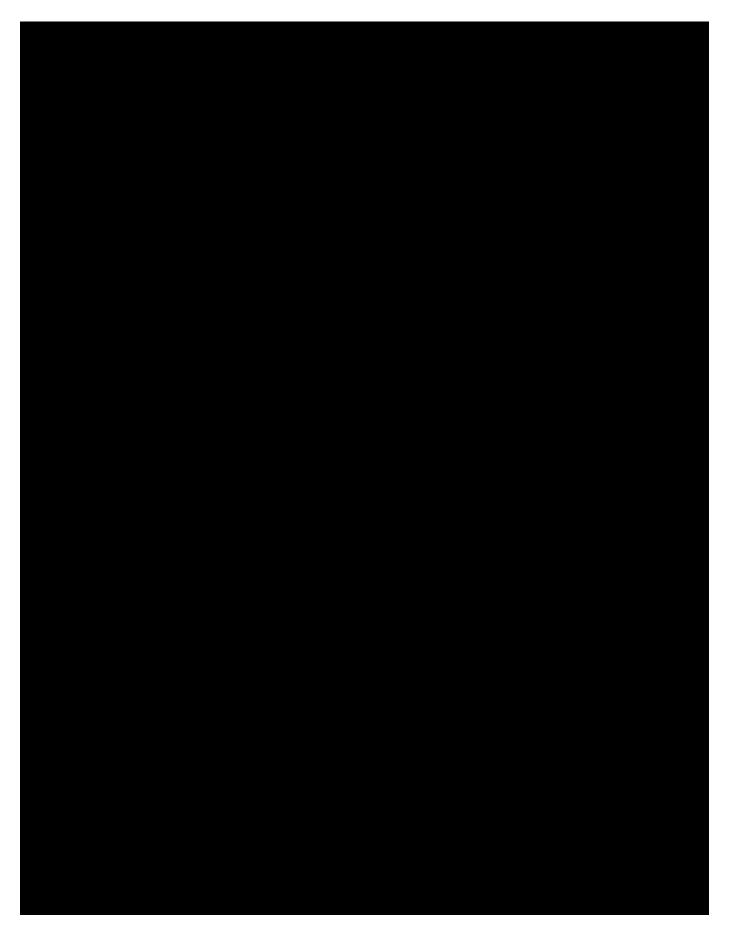
8.9 <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("<u>Security Interest</u>") in, and lien on (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.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.







ARTICLE 9 NOTICES

9.1 **Notices**.

- (a) <u>Addresses for the Delivery of Notices</u>. 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 <u>Exhibit N</u> 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) "<u>Force Majeure Event</u>" 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, 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; 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

(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;

(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.

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, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party, (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).

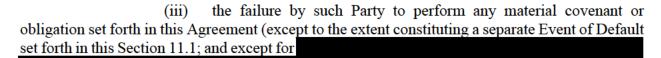
- 10.3 <u>Notice for Force Majeure Event</u>. Within Business Days of the non-performing Party's awareness of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the non-performing Party's 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 "<u>Defaulting Party</u>") 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);



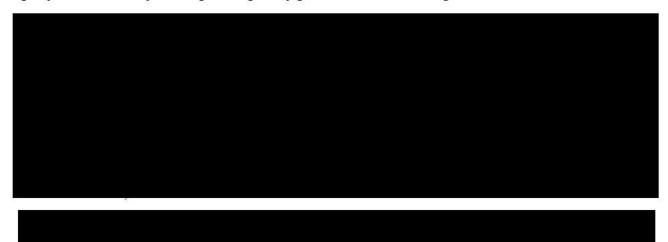
2) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (3) failures related to the Adjusted Energy Production that do not trigger the provisions of Sections 11.1(b)(vi) or (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (4) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(vii),

he 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
- (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;

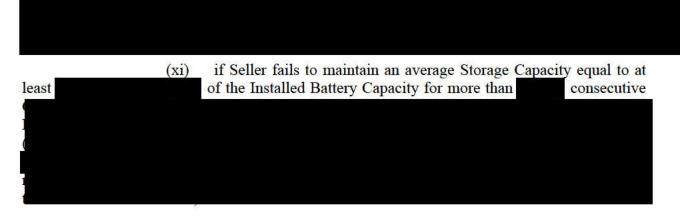
(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;



provided, for the purposes of this clause (vii), Seller shall be deemed to be available during all Insurable Force Majeure Events;



(x) if Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate of and (y)



- (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 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.



- 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 ("<u>Non-Defaulting Party</u>") 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);

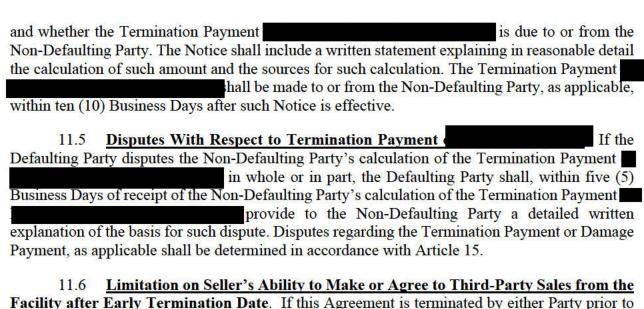
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or 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 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") 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

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 <u>Notice of Payment of Termination Payment</u>. 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,



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,

bwing 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

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 <u>Rights And Remedies Are Cumulative</u>. Except where liquidated damages or other express remedy or measure of damages are provided herein as the exclusive remedy, 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 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

- 12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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(e), 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 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 <u>Seller's Representations and Warranties</u>. 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.
- 13.2 <u>Buyer's Representations and Warranties</u>. 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.).

- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- (g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- 13.3 <u>General Covenants</u>. 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 <u>Prevailing Wage</u>. 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 ("<u>Prevailing Wage Requirement</u>"). Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site,

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.
- (\$1,000,000.00) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer's service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment in two parts: (a) Five Hundred Thousand Dollars (\$500,000.00) within sixty (60) days of the commencement of Contract Year 2, and (b) Five Hundred Thousand Dollars (\$500,000.00) within sixty (60) days of the commencement of Contract Year 3. 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 <u>General Prohibition on Assignments</u>. 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 <u>Collateral Assignment</u>. 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 ("<u>Collateral Assignment Agreement</u>") 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 under 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

(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 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
if required by Lender
to cure any Event of Default):

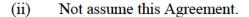
- (d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default and, if pursuant to an Event of Default, is not cured in accordance with Section 14.2(c);
- (e) Lender will receive prior Notice of and the right to approve each amendment 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 Agreemen

 ; 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

 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



- (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 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
- (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 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 <u>Permitted Assignment by Seller</u>. 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.

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 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 limited assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, and (B) being bound by any Collateral Assignment Agreement or any estoppel that any Lender may reasonably request, and Buyer and such assignee shall comply with any other reasonable request from any Lender, including delivery of estoppels and any other related documents, know-your-customer requirements and similar account opening information and customary documentation. Buyer shall pay Seller for any payments of amounts due under this Agreement that are not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment. Subject to the foregoing, Buyer may make such assignment by delivering Notice after the form of limited assignment agreement has been mutually agreed upon and 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, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer. The form of limited assignment shall be substantially in the form of the attached Exhibit U.

14.5 <u>Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity</u>.

- (a) Seller hereby grants Buyer with the exclusive right (such right, the "<u>Right of First Refusal</u>" or "<u>ROFR</u>") 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 "<u>Expansion Project</u>"). 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 "<u>Exercise Period</u>"), 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, to 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 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.
- 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**.

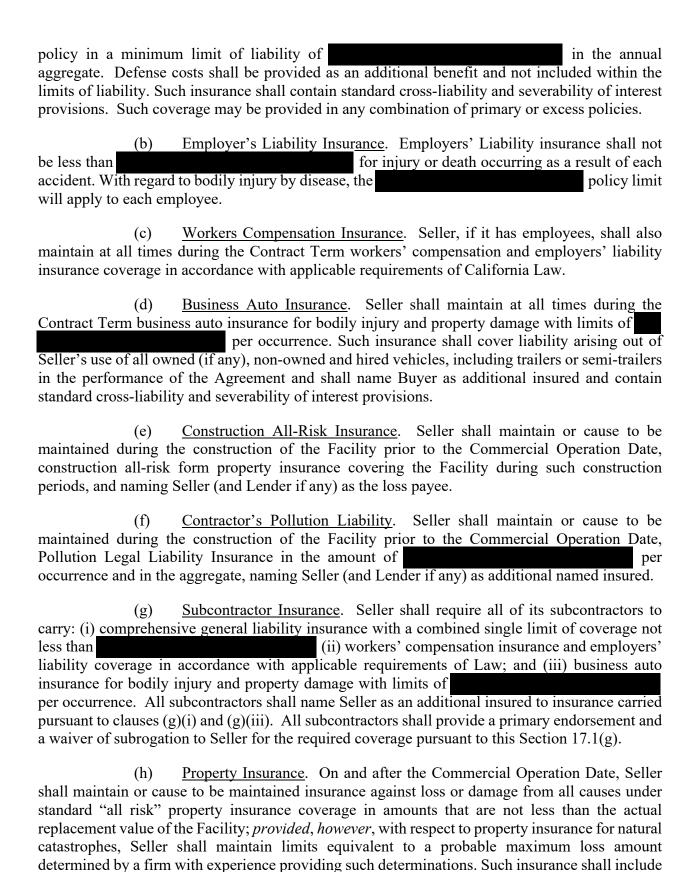
(a) Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") from and against all claims, demands, losses, liabilities, penalties, and expenses (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 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.
- Claims. Promptly after receipt by a Party of any claim or Notice of the 16.2 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 per occurrence, and an annual aggregate of not less than 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



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 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

- 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.
- 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 7920.000 et seq.).

- 18.3 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u> 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 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>No Waiver</u>. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 19.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. 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
- 19.5 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. 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.



- 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 <u>Change in Electric Market Design</u>. 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,

or 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 <u>Service Contract</u>. 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.

[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	SAN DIEGO COMMUNITY POWER, a California joint powers authority
By: Name: Title:	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:

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.



EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Construction Start

a.	"Construction Start" will occur when Seller has executed an engineering
	procurement and construction contract or
	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 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.

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. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 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.

 f 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

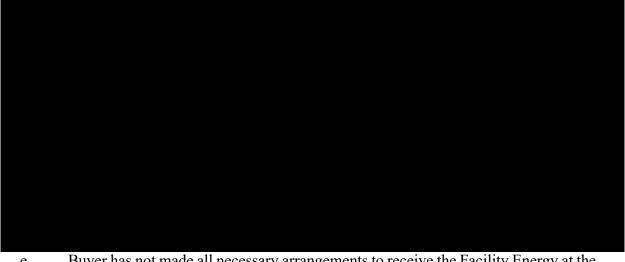
Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(c)

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

of Exhibit B.

payment of Commercial Operation Delay Damages pursuant to Section 2(c) of <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of <u>Exhibit B</u>, 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 <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of <u>Exhibit B</u>, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2.

- 4. <u>Extension of the Guaranteed Dates</u>. Independent of Seller's extension rights under Section 1 and 2 of this <u>Exhibit B</u> 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 "<u>Development Cure Period</u>") 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;



e. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date







EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this <u>Exhibit C</u>.

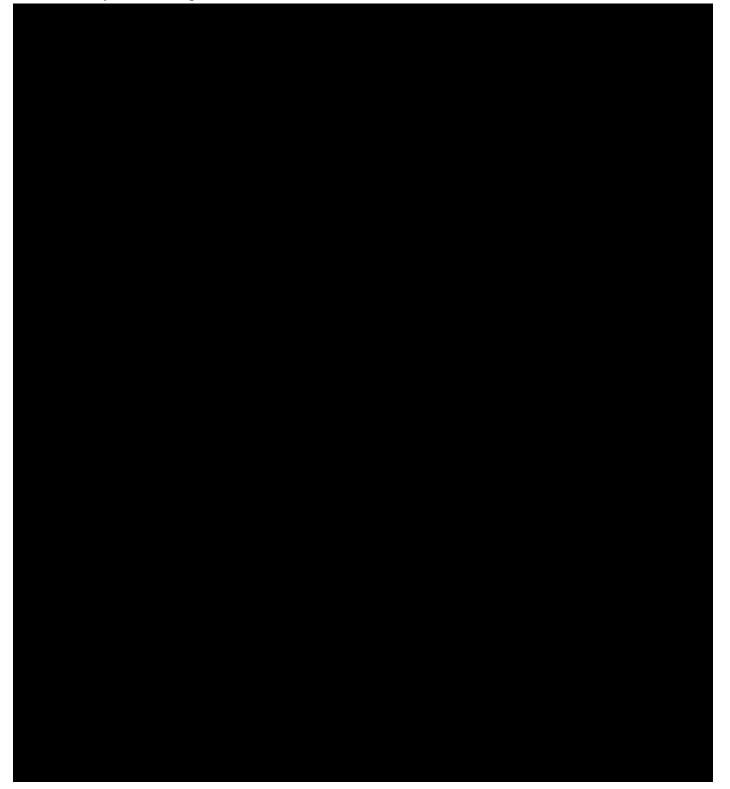




EXHIBIT D

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 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) <u>Notices</u>. Buyer or Buyer's SC shall provide Seller with access to a webbased 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) <u>CAISO Costs and Revenues</u>. 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.

- 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) <u>Dispute Costs</u>. 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) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master Data File and Resource Data Template</u>. 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) <u>NERC Reliability Standards</u>. 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 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).
- 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																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
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 a	dditiona	l rows fo	or each	day in th	ne mont	h]																		
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

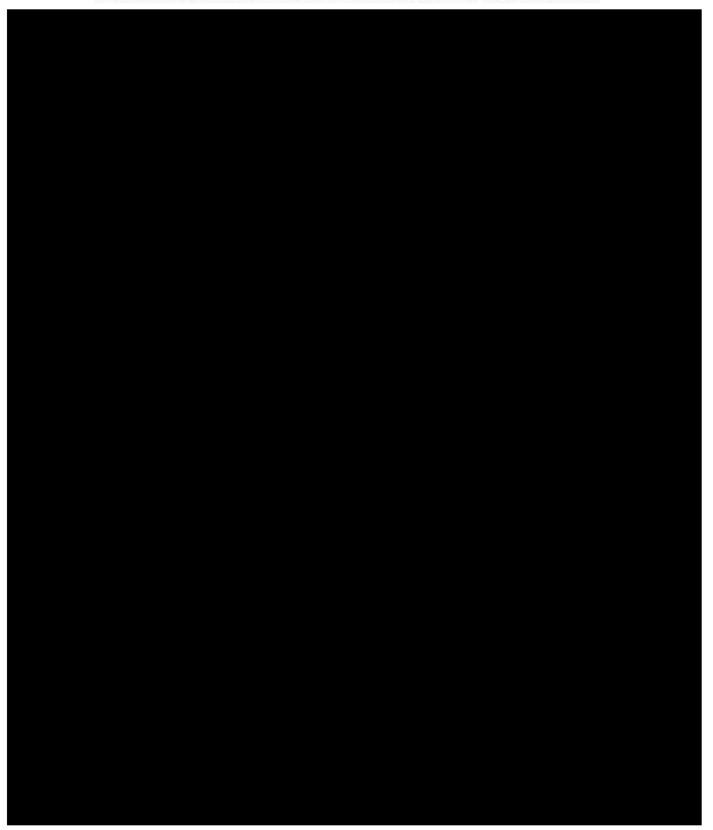


EXHIBIT H

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.	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	L ENGINEER]
this, 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

T	1 1		. 1	C 11		
	harahi	certify	tha	tal	0337110	~
	HELEDV	CCILIIV	LHC	101	IOW III	ν.
_						

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 " <u>Installed Capacity</u> "
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this day of, 20
ILICENSED PROFESSIONAL ENGINEER

[LICENSED PROFESSIONAL E	NGINEER
By:	
Printed Name:	
Title:	

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("<u>Certification</u>") is delivered by [SELLER ENTITY] ("<u>Seller</u>") to San Diego Community Power, a California joint powers authority ("<u>Buyer</u>") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [<u>DATE</u>] ("<u>Agreement</u>") 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 <u>Exhibit B</u> 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 " <u>Construction Start Date</u> "); and
(3)	the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
	TITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as day of, 20
[SEL	LER ENTITY]
By: _	
Printe	ed 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\$[XXXXXXXX]
Expiry Date:

Beneficiary:

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

Ladies and Gentlemen:

By the order of _________("<u>Applicant</u>"), we, [insert bank name and address] ("<u>Issuer</u>") 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 ("<u>Beneficiary</u>"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of and as amended (the "<u>Agreement</u>") 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 "<u>Expiration Date</u>").

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 <u>Exhibit A</u>, 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-XXXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the

Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.



Partial draws are permitted under this Letter of Credit;
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 amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least [sixty (60)] days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date; provided that, this Letter of Credit may in no event extend beyond [_____]. No presentation made under this Letter of Credit after such Expiration Date will be honored.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

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-XXXX-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 " <u>Agreement</u> ").				
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 "<u>Notice</u>") is delivered by [SELLER ENTITY] ("<u>Seller</u>") to San Diego Community Power, a California joint powers authority ("<u>Buver</u>") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("<u>Agreement</u>") 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		

 $^{^{\}mathbf{1}}\,\mathsf{To}$ 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:	All Notices:
Street: 1901 Harrison Street Suite 1600	PO Box 12716
City: Oakland, CA 94612	San Diego, CA 92112
Attn: Vice President, Asset Management	Attn: Chief Commercial Officer
1 2002 1 200 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Phone: (619) 657-0422
Phone: (713)-256-0801	Email:
Email:	PowerContracts@sdcommunitypower.org
assetmanagement@primergysolar.com	
Reference Numbers:	Reference Numbers:
Duns:	Duns:
Federal Tax ID Number:	Federal Tax ID Number:
Invoices:	Invoices:
Attn: c/o Kenon Group Consultants	Attn: SDCP Settlements
Phone: 480-269-9222	Phone: (619) 880-6545
Email: primergy-AP@kenongroup.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Primergy Solar Management LLC	Tenaska Power Services Co.
1901 Harrison Street Suite 1600	Attn: Kara Whillock
Oakland, CA 94612	Phone: (972) 333-6122
Attention: Vice President, Asset	Email: kwhillock@tnsk.com
Management	Day Ahead: (817) 303-1115
Phone: (713) 256-0801	Real Time: (817) 303-1852
Email:	Facsimile: (817) 303-1104
assetmanagement@primergysolar.com	
Confirmations:	Confirmations:
Attn: c/o Kenon Group Consultants	Attn: SDCP Settlements
Phone: 480-269-9222	Phone: (619) 880-6545
Email: primergy@kenongroup.com	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: c/o Kenon Group Consultants	Attn: Michael Maher
Phone: 480-269-9222	Phone: (415) 526-3020
Email: primergy@kenongroup.com	Email: mmaher@mahercpa.com
Wire Transfer:	Wire Transfer:
BENEFICIARY: Noble Solar LLC	BNK:
BNK:	ABA:
ABA:	ACCT:
ACCT:	

NOBLE SOLAR LLC	SAN DIEGO COMMUNITY POWER
("Seller")	("Buyer")
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Noble Solar LLC	Attn: SDCP General Counsel
Primergy Legal General Counsel	PO Box 12716
1901 Harrison Street Suite 1600	San Diego, CA 92112
Oakland, CA 94612	Email: legal@sdcommunitypower.org
Email: legal@primergysolar.com	
Emergency Contact:	Emergency Contact:
Attn: Todd Lacoste, Vice President of	Attn: Chief Commercial Officer
Asset Management	Phone: (619) 657-0422
Phone: (713)-256-0801	Email:
Email:	PowerContracts@sdcommunitypower.org
assetmanagement@primergysolar.com	

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. <u>Commercial Operation Date Storage Capacity Test.</u> 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 <u>Exhibit B</u>) shall be performed in accordance with this <u>Exhibit O</u> 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, 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. <u>Test Results and Re-Setting of Storage Capacity and Efficiency Rate</u>. 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 <u>Exhibit B</u>) 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 <u>Exhibit O</u>. For ease of reference, a Storage Capacity Test is sometimes referred to in this <u>Exhibit O</u> as a "<u>SCT</u>". 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 <u>Exhibit Q</u>) 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. <u>Parameters</u>. 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. <u>Site Conditions</u>. 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. <u>Test Showing</u>. 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) <u>General</u>. 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 <u>Exhibit Q</u>).
- (ii) <u>Abnormal Conditions</u>. 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) <u>Instrumentation and Metering</u>. 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. <u>Incomplete Test.</u> 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. <u>Final Report</u>. 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. <u>Supplementary Storage Capacity Test Protocol</u>. 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 <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("<u>Supplementary Storage Capacity Test Protocol</u>"). 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 <u>Exhibit C</u> until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTCOL

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

 . 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/ STORAGE AVAILABILITY CALCULATION

(a) <u>Monthly Storage Availability</u>. Seller shall calculate the "<u>Monthly</u> Storage Availability" for a given month of the Delivery Term using the formula set forth below:

	$[AVAILHRS_m + EXCUSEDHRS_m]$
Monthly Storage Availability (%) =	
	[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



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.



(c) <u>Availability Adjustment</u>. The applicable "<u>Availability Adjustment</u>" or "<u>AA</u>" is calculated as follows:



EXHIBIT Q

OPERATING RESTRICTIONS

	1. The Parties shall develop and finalize the Operating Restrictions prior to the Commercial
	Operation Date provided, the Operating Restrictions (i) may not be materially more restrictive of
	the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) shall,
	at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q
	(iii) shall include protocols and parameters for Seller's
	operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include
	facility scheduling, operating restrictions and Communications Protocols.
	6, F
į	



EXHIBIT R METERING DIAGRAM, METHOD OF DATA DELIVERY, DATA POINTS



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.

*D	
^Keo	uired
1100	unca

- 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 (WMDVLGBTEs) 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.



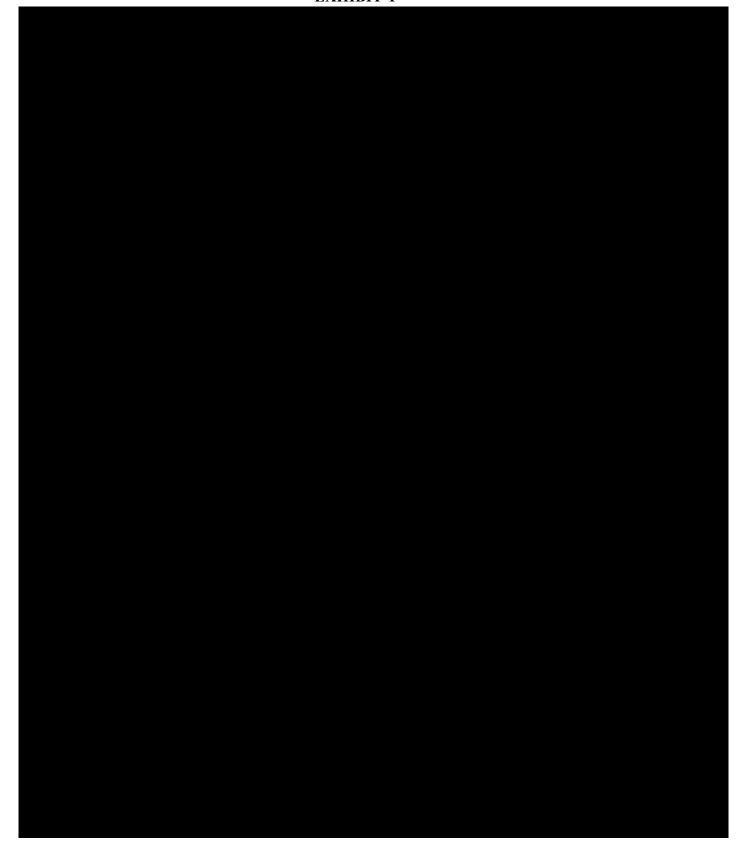
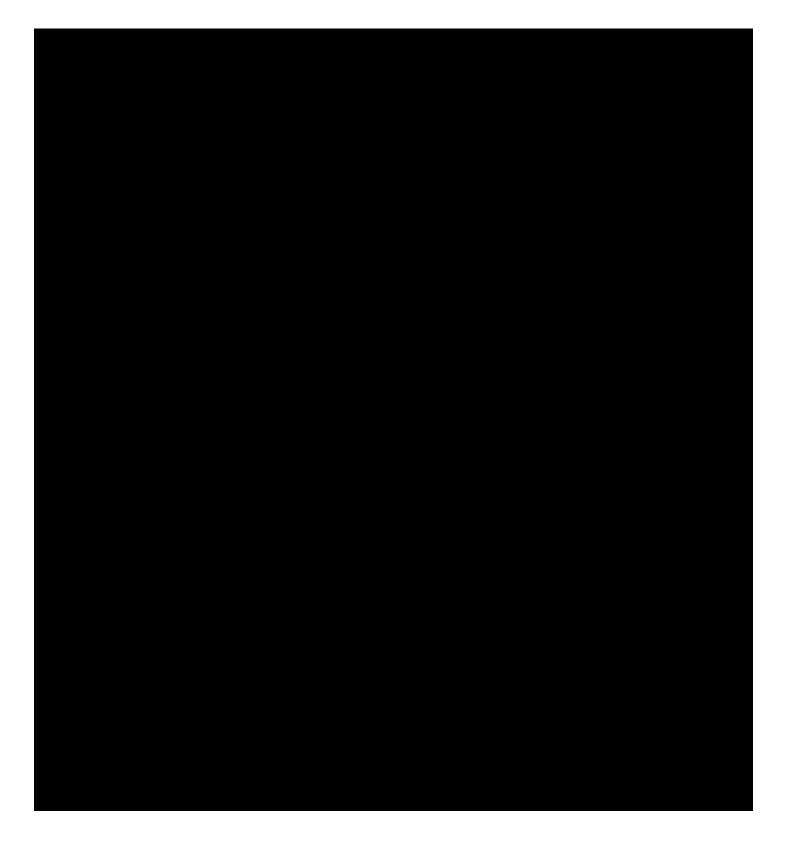


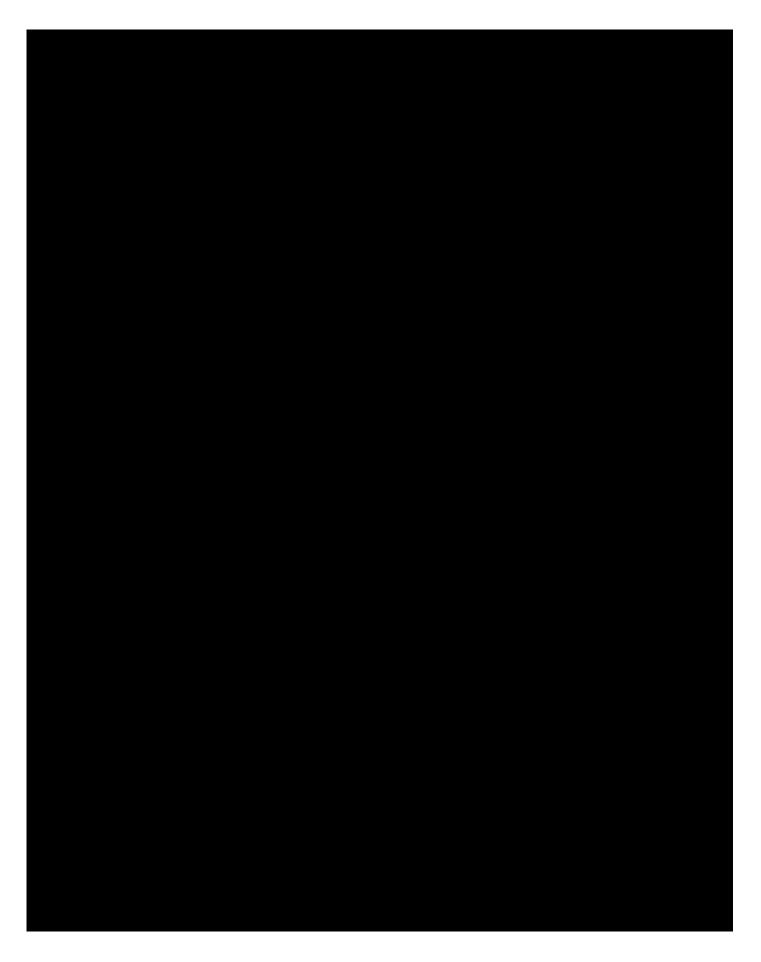


EXHIBIT U FORM OF LIMITED ASSIGNMENT AGREEMENT

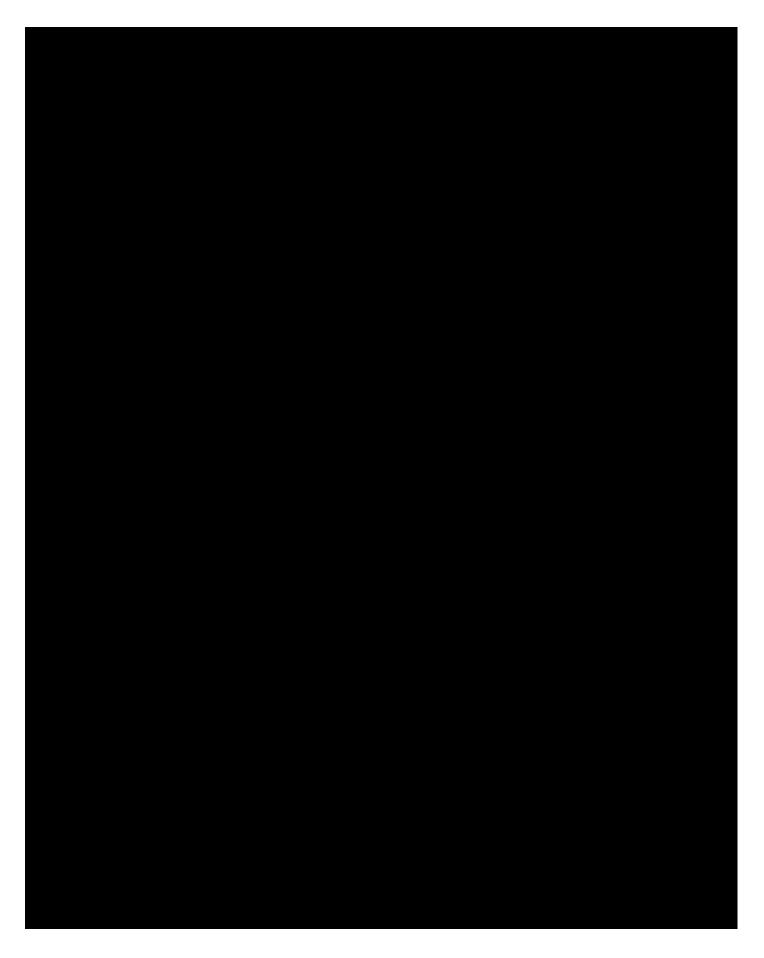


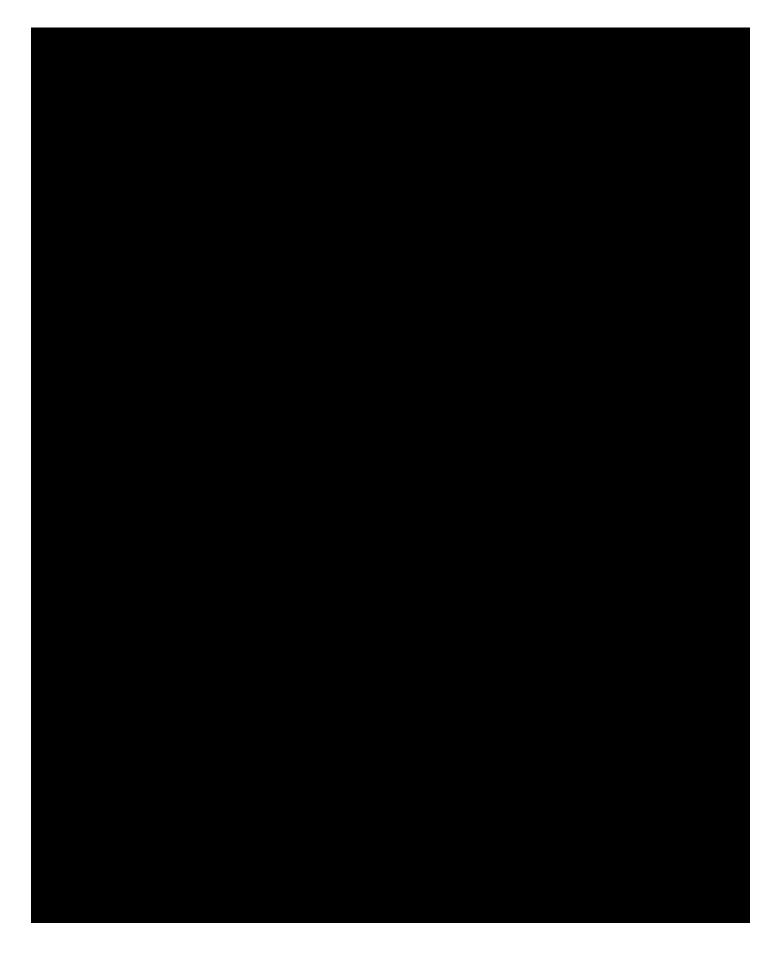










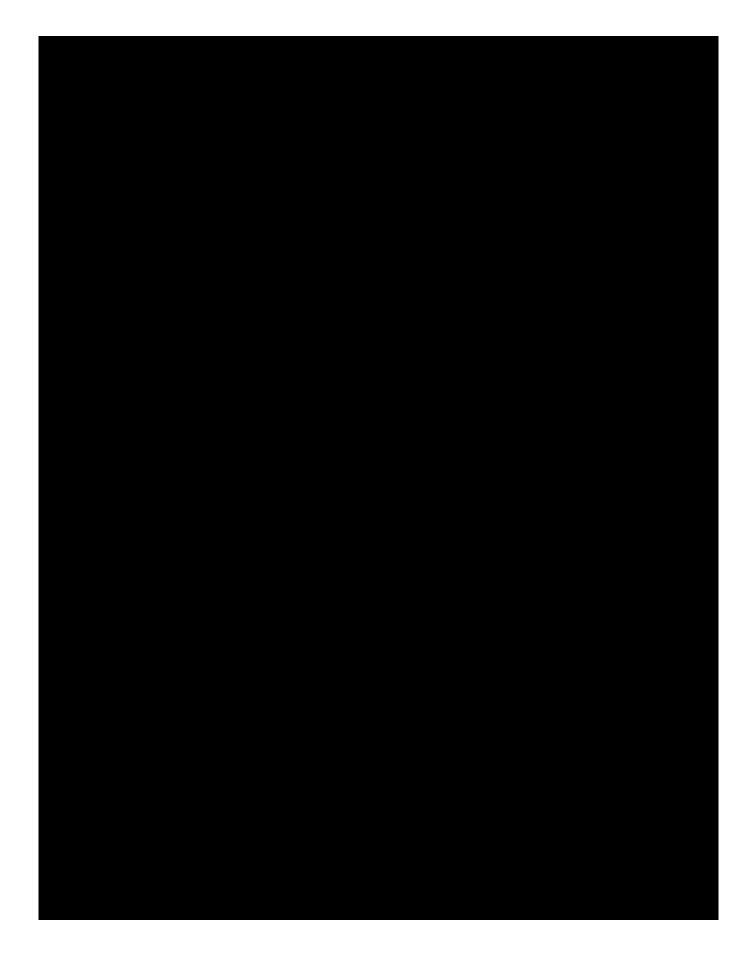














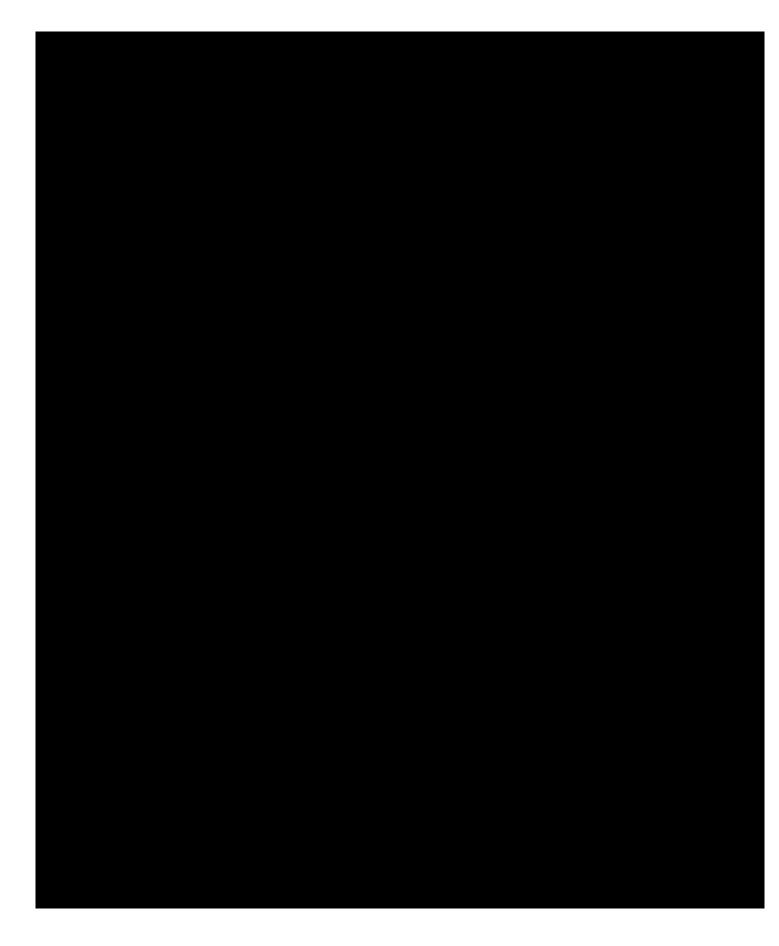
















SAN DIEGO COMMUNITY POWER Staff Report – Item 14

TO: Board of Directors

FROM: Andrea Torres, Director of Origination

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve EEI Master Agreement, Confirmation and Collateral Annex

with Clean Power Alliance of Southern California

DATE: May 22, 2025

RECOMMENDATION:

Approve the proposed Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), 10-year EEI Confirmation, and associated Paragraph 10 Collateral Annex with Clean Power Alliance of Southern California (CPA), referred to herein collectively as "VAMO Swap Agreements" or "VAMO Swap", in substantially final form for California RPS-eligible electric energy and associate Green Attributes, and authorize the Chief Executive Officer to execute the agreements.

BACKGROUND:

On October 1, 2019, the founding members of San Diego Community Power (Community Power) 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 Community Power Board of Directors (Board) may at its discretion adopt rules, regulations, policies, bylaws, and procedures governing the operation of Community Power. As previously presented to the Board in February and November of last year, section 3.2.8 of the JPA states that Community Power 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 ("prepayments"). These entities must sell that commodity to retail end-users that reside within their traditional service area. 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.

On October 24, 2024, the Board of Directors adopted Resolution No. 2024-08, authorizing execution of an energy prepayment transaction, related documents, and 'form of' documents subject to maximum issuance amount, limitation on fees, and minimum required savings. Community Power closed on its first prepayment transaction on November 20, 2024 and intends to execute additional bond purchase agreements to support the prepayment of additional power purchase and capacity agreements from renewable energy and storage projects to reduce the cost of such long-term agreements for Community Power customers.

Community Power currently sources over 1,000 GWh of renewable energy and associated Green Attributes (i.e. RECs) each year through an EEI Master Agreement and Confirm with San Diego Gas and Electric (SDG&E) executed on December 20, 2021. This agreement was entered into after Community Power's participation in the Voluntary Allocation Market Offer (VAMO) mechanism adopted by the Commission in D.21-05-030 to reform the administration of the Power Charge Indifferent Amount (PCIA). CPA has a similar set of agreements with Southern California Edison for the supply of renewable energy and RECs.

Community Power and CPA wish to swap up to 996,000 MWh each year from their respective VAMO volumes between July 2025 and June 2035 to enable both parties to secure prepayment of such volumes through their respective and independent prepayment bonds.

ANALYSIS AND DISCUSSION:

CCAs in California have begun entering into contracts that swap VAMO volumes to create a new long-term contract to enable prepayment transactions.

The swapped MWhs of renewable energy and RECs will be largely sourced from Community Power's and CPA's VAMO agreements with SDG&E and SCE, respectively. However, Community Power and CPA may choose to supply energy and RECs to each other from other solar resources in their long-term portfolios for which we have limited assignment rights. Community Power and CPA will each retain CAISO revenues associated with the delivery of energy and pay each other the same administratively set REC price, which mirrors the prices paid by Community Power and CPA to the IOUs under their respective VAMO contracts, such that there is no fiscal impact from the VAMO swap itself.

Contract Overview:

- <u>Master Agreement</u>: EEI's Master Agreement is a widely used standard contract in the U.S. wholesale electricity market. The attached Master Agreement modifies certain terms to that standard contract as agreed to by the parties.
- Paragraph 10 to the Collateral Annex: The Collateral Annex is a document that sets the agreed upon credit and collateral terms associated with the Master Agreement.
- <u>Confirmations</u>: Concurrently with (or subsequent to) an executed Master Agreement, separate "confirmations" are entered into contract for the purchase and sale of certain products, in this case the VAMO Swaps with one confirmation where Community Power is the seller and CPA is the buyer, and the other where CPA is the seller and Community Power is the buyer. The following table includes high-level terms outlined in the Confirmations:

Product:	California RPS-Eligible Electric Energy and associated Green Attributes from solar generating resources.
Contract Price:	"Contract Price" shall be the sum of the Energy Price and the REC Price.
Contract Quantity (MWh):	REC Vintage 2025: 360,000 MWh REC Vintage 2026: 720,000 MWh REC Vintage 2027: 720,000 MWh REC Vintage 2028: 720,000 MWh REC Vintage 2029: 720,000 MWh REC Vintage 2030: 996,000 MWh REC Vintage 2031: 996,000 MWh REC Vintage 2032: 996,000 MWh REC Vintage 2033: 996,000 MWh REC Vintage 2033: 996,000 MWh REC Vintage 2034: 996,000 MWh REC Vintage 2035: 498,000 MWh REC Vintage 2035: 498,000 MWh
Delivery Term:	July 1, 2025 through June 30, 2035; provided that, for the sole purpose of matching delivery of RECs with Delivered Energy, such period will extend through the date that all RECs associated with such Delivered Energy have been delivered from Seller to Buyer in accordance with this Confirmation.

FISCAL IMPACT:

No direct fiscal impact from the VAMO Swap Agreements. However, through the use municipal prepayment transactions, Community Power anticipates material VAMO portfolio cost savings for Community Power customers.

ATTACHMENTS:

- A: EEI Master Power Purchase and Sale Agreement with CPA
- B: EEI Confirmation for the California RPS-Eligible Electric Energy and Associated Green Attributes (Community Power as Seller)
- C: EEI Confirmation for the California RPS-Eligible Electric Energy and Associated Green Attributes (CPA as Seller)
- D: Paragraph 10 Collateral Annex with CPA

ITEM 14 ATTACHMENT A

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: [______], 2025 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (and any Confirmations confirming Transactions) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name: San Diego Community Power, a California joint powers authority ("Party A")

Name: Clean Power Alliance of Southern California, a California joint powers authority ("CPA" or "Party B")

All Notices:

815 E St., Ste 12716 San Diego, CA 92101

Attn: Chief Commercial Officer

Phone: (619) 657-0422

Email: PowerContracts@sdcommunitypower.org

Duns: 117548142

Federal Tax ID Number: 85-0824464

With additional Notices to:

Legal@SDCommunityPower.org

Invoices:

Attn: SDCP Settlements Phone: (619) 880-6545

Email: settlements@sdcommunitypower.org

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: SDCP Settlements Phone: (619) 880-6545

Email: settlements@SDCommunityPower.org

All Notices:

801 S Grand Ave, Suite 400 Los Angeles, CA 90017 Attn: Theodore Bardacke, CEO

Phone: (213) 269-5870

Email: tbardacke@cleanpoweralliance.org

Duns: 08-083-1567

Federal Tax ID Number: 82-2576927

Invoices:

Attn: Vice President, Power Supply

Phone: (213) 280-3920

Email: settlements@cleanpoweralliance.org

Scheduling:

Attn: Tenaska Scheduling Phone: (817) 462-1509

Email: tenaskacomm@tnsk.com

Confirmations:

Attn: Vice President, Power Supply

Address: Same as above Phone: (213) 269-5870

Email: settlements@cleanpoweralliance.org

EXECUTION VERSION

Payments:

Email: Finance@SDCommunityPower.org

Wire Transfer:

BNK: ABA: ACCT:

Credit and Collections:

Attn: Michael Maher Phone: (415) 526-3020

Email: mmaher@mahercpa.com

With additional Notices of an Event of Default to:

Attn: SDCP General Counsel Address: 815 E St., Ste 12716

San Diego, CA 92101

Email: Legal@SDCommunityPower.org

Payments:

Attn: Vice President, Power Supply

Phone: (213) 280-3920

Email: settlements@cleanpoweralliance.org

Wire Transfer:

BNK: ABA: ACCT:

Credit and Collections:

Attn: Chief Financial Officer Phone: (213) 269-5870

Email: dmcneil@cleanpoweralliance.org

With additional Notices of an Event of Default

to:

Attn: Nancy Whang, General Counsel

Phone: (213) 595-7818

Email: <u>nwhang@cleanpoweralliance.org</u>

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

arty A Tariff N/A			
Party B Tariff N/A			
Article Two			
Transaction Terms and Conditions	[X] Optional provision in Section 2.4.	If not checked, inapplicable.	
Article Four			
Remedies for Failure to Deliver or Receive	[X] Accelerated Payment of Damages.	If not checked, inapplicable.	
Article Five	[X] Cross Default for Party A:		
Events of Default; Remedies	[X] Party A: San Diego Community Power	Cross Default Amount:	
	[] Other Entity:	Cross Default Amount \$	
	[X] Cross Default for Party B:		
	[X] Party B: Clean Power Alliance of Southern California	Cross Default Amount:	
	[] Other Entity:	Cross Default Amount \$	
	5.6 Closeout Setoff:		
	[X] Option A (Applicable if no other selection is made.)		
	[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:		
	[] Option C (No Setoff)		
Article Eight	8.1 Party A Credit Protection:		
Credit and Collateral Requirements	(a) Financial Information:		
	[] Option A [] Option B Specify: [X] Option C Specify:		
	statements for such fiscal year demand, but in no event lat annual period and such requesuch financial states	taining audited consolidated financial ar of Party B as soon as practicable after er than days after the end of each est will be deemed to have been filled if tements are available at nce.org/, and (2) quarterly unaudited	

financial statements for Party B for the first three quarters of its fiscal year as soon as practicable after demand, but in no event later than days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and annual reports shall be prepared in accordance with generally accepted accounting principles, provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:
[X] Not Applicable [] Applicable
(c) Collateral Threshold:
[] Not Applicable[X] Applicable
If applicable, the provisions of Section 8.1(c) of the Master Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.
(d) Downgrade Event:
[X] Not Applicable[] Applicable
If applicable, complete the following:
[] It shall be a Downgrade Event for Party B if Party B's Credi Rating falls below BBB- from S&P or Baa3 from Moody's or it Party B is not rated by either S&P or Moody's.
[] Other, specify: Downgrade Event threshold as set forth in the Applicable Confirmation.
(e) Guarantor for Party B: N/A
Guarantee Amount: N/A
8.2 Party B Credit Protection:
(a) Financial Information:
[] Option A[] Option B Specify:[X] Option C Specify:
The annual report containing audited consolidated financia

statements for such fiscal year of Party B as soon as practicable after

demand, but in no event later than days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available https://sdcommunitypower.org, and (2) quarterly unaudited financial statements for Party B for the first three quarters of its fiscal year as soon as practicable after demand, but in no event later than after the applicable quarter. In all cases the statements shall be for the most recent accounting period and annual reports shall be prepared in accordance with generally accepted accounting principles, provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. (b) Credit Assurances: [X] Not Applicable [] Applicable (c) Collateral Threshold: Not Applicable [X] Applicable If applicable, the provisions of Section 8.2(c) of the Master Agreement shall be replaced by the provisions of the Collateral Annex attached hereto. (d) Downgrade Event: [X] Not Applicable **Applicable** If applicable, complete the following: [] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's. [] Other: Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's. (e) Guarantor for Party A: N/A Guarantee Amount: N/A

If not checked, inapplicable.

[X] Confidentiality Applicable

Article Ten

Confidentiality

Schedule M

- [X] Party A is a Governmental Entity or Public Power System
- [X] Party B is a Governmental Entity or Public Power System
- [] Add Section 3.6. If not checked, inapplicable
- [] Add Section 8.4. If not checked, inapplicable.

Other Changes

This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

ARTICLE ONE: GENERAL DEFINITIONS.

- 1. <u>Section 1.1</u> is amended by adding the following sentence at the end of the definition of "Affiliate":
 - "Notwithstanding the foregoing, the Parties hereby agree and acknowledge that (i) with respect to Party A the public entities designated as members or participants under the Joint Powers Agreement creating Party A shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith, and (ii) with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."
- 2. Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.
- 3. A new Section 1.8A is added as follows:
 - "1.8A "Collateral Annex" means that certain Collateral Annex to this Agreement, dated as of the date hereof, between Party A and Party B."
- 4. <u>Section 1.12</u> is superseded. See Paragraph 10 to the Collateral Annex.
- 5. Section 1.23 is amended by (i) inserting "or to obtain the Product at a more advantageous price or under more advantageous terms and conditions" after the word "hereunder" in the second sentence; (ii) inserting "or under more advantageous terms to a third party purchaser" after the phrase "Contract Price" in the second sentence; and (iii) inserting in the thirteenth line of this Subsection before the phrase "foregoing factors" the word "two".
- 6. <u>Section 1.24</u> is amended by adding before the period at the end thereof the following: "in accordance with Section 5.2".

- 7. A new <u>Section 1.26</u> is added as follows:
 - "1.26A "Joint Powers Agreement" means the Joint Powers Agreement, effective as of October 1, 2019, as amended, providing for the formation of Party A, as such agreement may be further amended or amended and restated."
 - "1.26B "Joint Powers Agreement" means the Joint Powers Agreement, effective as of June 27, 2017, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated."
- 8. <u>Section 1.27</u> is superseded. See Paragraph 10 to the Collateral Annex.
- 9. <u>Section 1.28</u> is amended by adding before the period at the end thereof the following: "in accordance with Section 5.2".
- 10. A new Section 1.29A is add as follows:
 - "1.29A "**Member**" means the city, county or joint powers authority which is a member of Party A or Party B, as the case may be."
- 11. <u>Section 1.30</u> is amended by deleting "Investor Services" and replacing it with "Investors Service".
- 12. <u>Section 1.46</u> is amended by deleting it in its entirety in this section and in each other location where the term "**Potential Event of Default**" is used.
- 13. <u>Section 1.50</u> is amended by deleting the reference to section "2.4" and replacing with "2.5".
- 14. Section 1.51 is amended by (i) inserting the phrase "for delivery" in the second line after the word "purchases" and before the phrase "at the Delivery Point" and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the phrase "absent such a purchase (Buyer has no obligation to enter into actual replacement transactions)".
- 15. Section 1.52 shall be amended by deleting the phrase "the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.)" and replacing it with the following "S&P Global Ratings, a division of S&P Global, Inc."
- 16. Section 1.53 is amended by:
 - (i) deleting the phrase "at the Delivery Point" from the second line;
 - (ii) deleting the phrase in line 5 "at the Seller's option" and replacing it with "absent such a sale"; and
 - (iii) inserting after the word "liability" in the ninth line the following: "provided, further, if Seller is unable after using commercially reasonable

- efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).".
- 17. <u>Section 1.56</u> is amended by (i) deleting the words "pursuant to Section 5.2" and by adding before the period at the end thereof the following: ", as determined in accordance with Section 5.2.
- 18. <u>Section 1.60</u> is amended by inserting the words "in writing" immediately following the words "agreed to."
- 19. A new Section 1.62 is added as follows:

"1.62 "Unpaid Amounts" means the amounts owed by one Party to the other Party under this Agreement that have not been paid as of the Early Termination Date whether or not such amounts are then due, including, without duplication, (i) invoiced amounts, (ii) uninvoiced amounts, including without limitation amounts payable in respect of physical deliveries or settlements that occurred prior to the Early Termination Date, (iii) damages payable under Article 4 of this Agreement, and (iv) taxes or other costs or expenses to the extent an obligation to pay shall have accrued under this Agreement or the Confirmation relating to a Transaction on or prior to the Early Termination Date; *provided*, that Unpaid Amounts shall not include any Settlement Amounts."

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.

- 20. Section 2.1 is deleted in its entirety and replaced with the following:
 - "A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction."
- 21. <u>Section 2.3</u> is hereby deleted in its entirety and replaced with the following:
 - "2.3 **Confirmation**. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties."
- 22. Section 2.4 is amended by (i) deleting the words "either orally or" in the seventh line and adding "a" before the word "writing" and (ii) deleting "be deemed to be accepted pursuant to Section 2.3" and replacing it with "govern such Transaction".
- 23. <u>Section 2.5</u> is deleted in its entirety and replaced with the following:

"Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees."

ARTICLE THREE: OBLIGATIONS AND DELIVERIES.

- 24. Section 3.2 is hereby amended by adding the following text to the end of the Section: "Product deliveries shall be scheduled in accordance with the thencurrent applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region."
- 25. Section 3.3 is amended by deleting the second to last sentence of Section 3.3 in lines 7 and 8, which reads "The Claiming Party shall remedy the Force Majeure with all reasonable dispatch" and replacing it with the following: "The Claiming Party shall make commercially reasonable efforts to avoid the adverse impacts of Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance."

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.

- 26. <u>Section 4.1</u> is hereby amended by deleting the phrase "or by Buyer's failure to perform" in the second and third line and replacing such phrase with "or otherwise by the terms of this Master Agreement".
- 27. <u>Section 4.2</u> is hereby amended by deleting the phrase "or by Seller's failure to perform" in the second and third line and replacing such phrase with "or otherwise by the terms of this Master Agreement".

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

- 28. <u>Section 5.1(a)</u> is amended to change "three (3) Business Days" to "five (5) Business Days".
- 29. Section 5.1(b) is deleted in its entirety and replaced as follows: "(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated; provided, however, that it shall only be an Event of Default under this Section 5.1(b) if the adverse effect of such misrepresentation, if susceptible of cure, is not remedied within thirty (30) days after the Party's receiving notice thereof".

- 30. <u>Section 5.1(c)</u> is amended to change "three (3) Business Days" to "thirty (30) days".
- 31. Section 5.1(e) is hereby amended by adding prior to the semicolon the phrase "or the Collateral Annex, as applicable, and such failure is not remedied by the close of business on the Business Day following the effectiveness of written notice thereof".
- 32. Section 5.1(g) is deleted in its entirety and replaced with the following:

"if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming immediately due and payable; provided, however, that it shall not constitute an Event of Default under this Section 5.1(g) if (a) (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such Party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third Business Day after receipt of written notice of its occurrence; or (b) to the extent that any applicable cure period or grace period is available;"

- 33. <u>Section 5.1(h)(v)</u> is amended to add "made in connection with this Master Agreement" after "any guaranty".
- 34. <u>Section 5.1</u> is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding a new subsection which reads as follows:
 - "(i) a representation or warranty with respect to the Defaulting Party's financial statement that is materially false or misleading if such false or misleading statement is not remedied within five (5) Business Days after written notice."
- 35. <u>Section 5.2</u> is amended by (i) reversing the placement of "(i)" and "to" in the third line; and (ii) deleting the following phrase from the last line: "as soon thereafter as is reasonably practicable)." and replacing it with the following:

"then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party in a commercially reasonable manner by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party shall reference information supplied by

one or more third parties 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, and information obtained through a recognized exchange, clearinghouse, or reference entity, with such adjustments that the Non-Defaulting Party determines, acting in good faith and in a commercially reasonable manner, are applicable based on the specific terms of such Transaction or Transactions. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If quotations or relevant market data from third party sources are not readily available, the Non-Defaulting Party may reference to information of the types described above as are available from internal sources (including any of the Non-Defaulting Party's affiliates) if that information is of the same type used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions. If the Non-Defaulting Party's calculation of a Settlement Amount for a Terminated Transaction results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was inthe-money), then the Settlement Amount for such Terminated Transaction shall be deemed to be zero dollars (\$0.00)."

36. Section 5.3 is amended and restated as follows:

"The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight or the Collateral Annex, as applicable, plus any or all other amounts due to the Defaulting Party under this Agreement, including Unpaid Amounts owed by the Non-Defaulting Party to the Defaulting Party against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article Eight or the Collateral Annex, as applicable, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, including Unpaid Amounts owed by the Defaulting Party to the Non-Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate."

37. Section 5.7 is deleted in its entirety and replaced with the following:

"Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance or payments (including payment or performance obligations under the Collateral Annex, if applicable) under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall

have occurred and be continuing to exercise any remedy available at law or in equity. In addition, if an Early Termination Date is declared pursuant to Section 5.2 following suspension of performance, the Settlement Amount for the suspended Transactions shall include the Gain or Loss resulting from the suspension of performance prior to the Early Termination Date. The Gain or Loss resulting from suspension of performance will be determined in a commercially reasonable manner by the Non-Defaulting Party as of the originally scheduled date for delivery had such suspension not occurred."

ARTICLE SEVEN: <u>LIMITATIONS</u>.

- 38. Section 7.1 shall be amended by:
 - (i) adding "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE," in the fifth sentence;
 - (ii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN **THIS** SECTION **SHALL AFFECT** ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING LIMITED REMEDIES FOR **FAILURE** NOT TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3." immediately after the words "ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE"; and
 - (iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES."

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.

39. Section 8.4 is added as follows:

"In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds the Termination Payment plus the Independent Amount."

40. Section 8.5 is added as follows:

- "UCC Waiver. The Collateral Annex to this Agreement set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and as specified in the Collateral Annex, neither Party:
- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 and the Collateral Annex of this Master Agreement; and
- (c) all rights, express or implied, relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code, or case law applying similar doctrines, are waived."

ARTICLE TEN: MISCELLANEOUS.

- 41. In Section 10.2, replace the phrase "(including any Confirmation accepted in accordance with Section 2.3)" with "(including any Confirmation confirming a Transaction)" in Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).
- 42. <u>Section 10.2(vii)</u> is amended by deleting the phrase "or Potential Event of Default".
- 43. Section 10.2(x) is deleted and replaced with the following:
 - "(x) it is an "eligible contract participant" within the meaning of Section 1a(18) of the Commodity Exchange Act."
- 44. Section 10.5 is amended by (i) deleting the words "which consent may be withheld in the exercise of its sole discretion" and replacing them with the words "which consent shall not be unreasonably withheld", (ii) moving the parenthetical "(and without relieving itself from liability hereunder)" that appears in the fourth line so that it follows immediately after the text that follows subsection 10.5(i), and (iii) deleting the words from the beginning of clause (ii) through the words prior to "provided, however, that in each such case, any such assignee" and replacing them with:
 - "(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate's creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed or otherwise supported by such Party or its Guarantor, if any, in accordance with a guaranty agreement or other credit support, in form, substance and amount and from a Guarantor or other credit support provider, in each case that is satisfactory to the other Party in its sole discretion, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; provided, however, that in the case of any assignment pursuant to subsections (ii) or (iii) above, regardless of whether the assigning party is Party A or Party B, any such assignee (1) can make all of the representations and warranties of the assignor set forth herein after giving effect to such transfer, (2) complies with the non-assigning party's know-your-customer and anti-money laundering internal rules, policies and procedures as reasonably and consistently applied, and (3) such transferee has satisfied all of the credit support requirements of such Party under this Agreement."

- 45. <u>Section 10.6</u> is amended by (i) changing "NEW YORK" to "CALIFORNIA", and (ii) deleting the second sentence in its entirety and replacing it with the following:
 - "(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN LOS ANGELES, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."

"The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding."

- 46. Section 10.7 is amended by (i) deleting the word "facsimile" at the end of the second sentence and replacing it with "e-mail"; (ii) deleting the words "facsimile or" from the third sentence; and (iii) amending the fourth sentence by adding ", e-mail" after "by overnight United States mail".
- 47. Section 10.8 shall be amended by:
 - (i) replacing the phrase "(including any Confirmation accepted in accordance with Section 2.3)" with the phrase "(including any Confirmation entered into hereunder)";

- (ii) changing the words "parties" and "party" to "Parties" and "Party" in the third sentence;
- (iii) adding at the end of the second to last sentence: "and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11, (iv) Waiver of Jury Trial and general reference provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6, (vii) Section 10.18, and (viii) Section 10.4 shall also survive the termination of the Agreement or any Transaction."; and
- (iv) adding the following to the end thereof: "This Master Agreement and any Confirmation hereunder may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page. The Parties may rely on electronic or scanned signatures as originals under this Master Agreement and any Confirmation."

48. <u>Section 10.9</u> is amended as follows:

- (i) deleting the first sentence in its entirety and replacing it with the following: "Each Party agrees to provide copies of its records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement if reasonably requested by the other Party.";
- (ii) in the second sentence insert the words "copies of" before the word "statements";
- (iii) in the third sentence, the words "If any such examination reveals any inaccuracy in any statement," are replaced by: "If the Parties determine that any statement, charge or computation contained any inaccuracy,"; and
- (iv) add the following text at the end: "The Parties agree that such examination and audit refer only to the examination and audit of copies of the relevant books, records and telephone recordings provided by a Party and do not grant either Party the right to an on-premises examination and audit."
- 49. <u>Section 10.10</u> shall be amended by adding the following after the last sentence of Section 10.10:

"Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 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."

50. <u>Section 10.11</u> is hereby deleted in its entirety and replaced with the following:

"Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet to this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.). Each Party acknowledges that the other Party may submit information to it that the other Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.) or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act, including but not limited to, California Government Code § 7922.000. In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." However, the Parties failure to designate information as confidential does not waive or limit the Parties' rights to object to the production of material or assert exemptions to the requested documents. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

Upon request or demand of any third person or entity not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Party A or Party B, as applicable, will as soon as practical notify the other Party (the "Disclosing Party") in writing via email that such request has been made. Subject to requirements under applicable law, including the California Public Records Act, the Party receiving such request or demand (the "Receiving Party") will use reasonable efforts to provide the Disclosing Party at least thirty (30) days' notice before it produces Confidential Information to any third person or entity. The Disclosing Party

will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If the Disclosing Party does take or attempt to take such action, the Receiving Party shall provide timely and reasonable cooperation to the Disclosing Party, if requested by the Disclosing Party, and the Disclosing Party agrees to indemnify and hold harmless the Receiving Party, its officers, employees and agents (the "Receiving Party Indemnified Parties"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of the Receiving Party Indemnified Parties for the Receiving Party's refusal to disclose any Requested Confidential Information."

51. The following **Mobile-Sierra** clause shall be added as <u>Section 10.12</u>:

"Standard of Review/Modifications.

- (a) Absent the prior mutual written agreement of all Parties to the contrary, the standard of review for any proposed changes to the rates, charges, classifications, terms and/or conditions of this Agreement or any Transaction entered into thereunder, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and further refined in *NRG Power Marketing v. Maine Public Utilities Commission*, 558 U.S. 165 (2010) (the "Mobile-Sierra" doctrine).
- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so), then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall

seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

(c) The Parties agree that in the event that any portion of this Section 10.12 is determined to be invalid, illegal or unenforceable for any reason, the provisions of subsections (a) and (b) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law."

52. The following shall be added as a new Section 10.13:

"Party Deliveries. Upon request of a Party, the other Party shall provide to the Party (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, if applicable, (ii) resolutions of the managers, members, or other governing body, as applicable, of the other Party approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of the other Party executing this Master Agreement and any Confirmations executed in connection herewith."

53. The following shall be added as a new Section 10.14:

"Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party A and Party B are each commercial entities engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers."

54. The following new Section shall be added as Section 10.15:

"Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Confirmation or the Imaged Agreement (or photocopies of the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence."

55. The following new Section shall be added as Section 10.16:

"Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the fallback Price Source specified in the Confirmation for the relevant Transaction, if any; provided, however, if no fallback Price Source is specified or if the Floating Price cannot be determined by reference to the fallback Price Source, then the Parties shall negotiate in good faith to agree on the Floating Price (or a method for determining the Floating Price), and if the Parties have not so agreed on or before the second Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be deemed to be the arithmetic mean of the Floating Prices determined by at least three leading, independent dealers in the principal trading market for the relevant commodity, none of which are affiliates of either Party, taking into consideration the latest available quotation for the relevant commodity and any other information that the Parties and the dealers in good faith deem relevant. Such dealers will be jointly appointed by the Parties. If, by the fifth Business Day following the first Trading Day on which that Market Disruption Event occurred or existed, the Parties have not agreed upon the dealers or a determination of the Floating Price cannot be obtained from at least three dealers, the relevant Transaction(s) will be terminated as of such fifth Business Day in accordance with the methodology specified in Section 5.3, except that each Party will determine a Settlement Amount for the Transaction(s), and the Settlement Amount will be an amount equal to (x) one-half the difference between the Settlement Amount of the Party with the higher Settlement Amount and the Settlement Amount of the Party with the lower Settlement Amount plus (y) the Settlement Amount of the Party with the lower Settlement Amount.

"Determination Period" means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining the Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d)

the temporary or permanent closing of any Exchange specified for determining the Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"RTO" means any regional transmission operator or independent system operator.

"RTO Transaction" means a Transaction in which the Price Source is an RTO

"Trading Day" means a day in respect of which the relevant Price Source published or should have published the Floating Price.

- (ii) Revisions to Published Prices. For purposes of determining the Floating Price for any day, if the price published or announced on a given day or used or to be used to determine the Floating Price is subsequently revised and the revision is published or announced by the person responsible for that publication or announcement within the later of (1) one-hundred and eighty (180) days of the original publication, announcement or availability or (2) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of (i) that revision and (ii) the amount (if any) that is payable as a result of that revision. If, not later than thirty (30) days after publication or announcement of that revision, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that revision.
- (iii) <u>Calculation of Floating Price</u>. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged."
- 56. The following new Section shall be added as Section 10.17:

"Generally Accepted Accounting Principles. Any reference to "generally accepted accounting principles" shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently

applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement."

57. The following new Section shall be added as <u>Section 10.18</u>:

"No Recourse Against Constituent Members. Party A and Party B are each 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.) and are each a public entity separate from its Members. Each Party will solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this Agreement. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party's Members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party's Members, in connection with this Agreement. Each Party agrees that the obligation to make payments with respect to this Master Agreement and each Transaction, are to be made solely from a Party, and not from the individual Members of the Party."

58. The following is added as a new Section 10.19:

"Each Party acknowledges and agrees that (i) it is a "forward contract merchant" within the meaning of the Title 11 of the United States Code, as amended (the "Bankruptcy Code"), (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a "settlement payment" within the meaning of the Bankruptcy Code, (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a "margin payment" within the meaning of the Bankruptcy Code, (iv) each Party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code, (v) electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the Bankruptcy Code, (vi) the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code, and (vii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties."

59. The following is added as a new Section 10.20:

"Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement."

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS.

- 60. Schedule M is hereby deleted in its entirety and replaced with the following:
 - a. The Parties agree to add the following definitions to Article One:

""Act" means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.)."

""Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof."

b. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One:

"If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity."

c. The Parties agree to add the following representations and warranties to Section 10.2:

"each Party represents and warrants to the other Party that continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and such Party's bylaws, all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of such Party are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by such Party are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) such Party's obligations to make payments with respect to this Master Agreement and each Transaction are unsubordinated obligations, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of either Party or create any kind of lien on, or security interest in, any property or revenues of either Party which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets."

d. The Parties agree to add the following sections to Article Three:

"Section 3.4(a) Party A's Deliveries. Upon request by Party B, Party A shall provide Party B (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party A of this Master Agreement and (ii) a certificate, signed by an authorized signatory of Party A, certifying the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party A with authority to act on behalf of Party A.

Section 3.4(b) Party B 's Deliveries. Upon request by Party A, Party B shall provide Party A (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) a certificate, signed by an authorized signatory of Party B, certifying the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 No Immunity Claim. Each Party warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to this Master Agreement, or any collateral securing each Party's obligations under this Master Agreement from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.)."

e. The Parties agree to add the following sentence at the end of Section 10.6 – Governing Law:

"IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY."

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.

61. The Parties agree to add the following definitions to Schedule P:

"CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator ("CAISO") Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO Tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" as defined in the CAISO Tariff. A CAISO "Schedule Adjustment" (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the CAISO Tariff).

"West Firm" or "WSPPC-Firm" means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service.

"WSPP Agreement" means the WSPP as amended from time to time.

62. The Parties agree to add the following new Section 7 to Schedule P:

"Other Products and Service Levels: The Parties may agree to use a product/service level defined by a different agreement (i.e., the WSPP Agreement,) for a particular Transaction. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such Transaction, the Transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions; (2) the regional reliability requirements and guidelines; (3) Force Majeure/Uncontrollable Force definitions, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning ascribed to them in the different agreement in effect on the date the Transaction was entered into."

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

SAN DIEGO COMMUNITY POWER, a California joint powers authority	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
By:	By:
Name:	Name: Lindsay Descagnia
Title:	Title: Vice President, Power Supply

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

ITEM 14 ATTACHMENT B

CONFIRMATION LONG-TERM RPS ENERGY AND GREEN ATTRIBUTES

This confirmation ("Confirmation") confirms the Transaction between San Diego Community Power, a California joint powers authority ("Party A") and Clean Power Alliance of Southern California, a California joint powers authority ("Party B"), each individually a "Party" and together the "Parties", dated as of May ____, 2025 (the "Effective Date"), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of the Edison Electric Institute Master Power Purchase and Sale Agreement dated [Month, Date], [Year] between the Parties (the "Master Agreement"). In the event of a conflict between the provisions of the Master Agreement and this Confirmation, this Confirmation shall control. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments hereto or thereto, shall collectively be referred to as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement or the CAISO Tariff.

The Parties agree as follows:

Seller:	SDCP		Buyer:	CPA
Project. During the Delivery purchase and receive terms and condition attempt to deliver		rgy and associated Green Attributes generated from the Term, Seller shall deliver and sell, and Buyer shall t, the Contract Quantity of this Product, subject to the s of this Confirmation. Seller shall not substitute or any Product, including Green Attributes, from any ther than the Project.		
Contrac	ct Price:	"Contract Price" means the Index Price plus the Green Attributes Price. The "Green Attributes Price"		
Contrac (MWh)	ct Quantity :	REC Vintage 2025: 36 REC Vintage 2026: 72 REC Vintage 2027: 72 REC Vintage 2029: 72 REC Vintage 2029: 72 REC Vintage 2030: 93 REC Vintage 2031: 93 REC Vintage 2032: 93 REC Vintage 2033: 93 REC Vintage 2033: 93 REC Vintage 2034: 93 REC Vintage 2034: 93 REC Vintage 2035: 43	20,000 MWh 20,000 MWh 20,000 MWh 20,000 MWh 96,000 MWh 96,000 MWh 96,000 MWh 96,000 MWh	1 1 1 1 1 1 1 1 1 1 1 1
Deliver	y Term:			35; provided that, for the sole purpose of nergy, such period will extend through the

	date that all RECs associated with such Energy have been delivered from Seller to Buyer in accordance with this Confirmation.	
Delivery Point:	SP15 (TH_SP15_GEN-APND)	
Payment Terms:	See Section 2	
Lockbox (Y/N):	N/A	

This Confirmation is subject to the General Terms and Conditions and Exhibits identified below and attached hereto: Exhibit A – Project Exhibit B – Form of Limited Assignment Agreement

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

SAN DIEGO COMMUNITY POWER, a California joint powers authority	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
Sign:	Sign:
Print: Karin Burns	Print: Lindsay Descagnia
Title: Chief Executive Officer	Title: Vice President Power Supply

GENERAL TERMS AND CONDITIONS

1. PRODUCT.

1.1 Seller Delivery Obligation.

- (a) Seller's Conveyance of Energy.
 - (i) Beginning on the first day of the Delivery Term and throughout all applicable months of the Delivery Term, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure.
 - (ii) The Energy transferred hereunder is transferred immediately to Buyer upon receipt of such Energy by Seller. Should any Energy provided by Seller under this Confirmation be determined to not have been transferred to Buyer immediately or to have originated from a resource other than the Project, Seller shall remedy such failure in a manner reasonably acceptable to Buyer within a reasonable period of time after written notice of such failure is given to Seller by Buyer.
 - (iii) In the event that Energy being transferred from Seller to Buyer originates from a facility outside of the state of California that does not have a pseudo-tie arrangement with the CBA, Seller shall provide Buyer a reconciliation consisting of hourly meter data, tag data and associated calculations, lesser of each by hour, for each vintage month of RECs delivered to Buyer under this Confirmation.

(b) <u>Seller's Conveyance of Green Attributes.</u>

- (i) <u>Green Attributes.</u> Seller hereby provides and conveys all Green Attributes associated with all Energy generated from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. The Green Attributes are delivered and conveyed upon completion of all actions described below.
- (ii) Green Attributes Initially Credited to Seller's WREGIS Account.
 - (A) During the Delivery Term, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

- (B) For each applicable month of the Delivery Term, Seller shall promptly deliver and convey the Green Attributes associated with the Energy delivered in Section 1.1(a) within five (5) Business Days after the end of the month in which the WREGIS Certificates for the Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Buyer into Buyer's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer; provided further, that if Seller fails to properly transfer such WREGIS Certificates to Buyer in accordance with the above due to an error or omission of an administrative or clerical nature and if such failure can be cured with no harm to Buyer, then Seller may cure such failure within thirty (30) days after notice of such failure.
- (C) In addition to its other obligations under this Section 1.1, Seller shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 1.1(a) of this Confirmation
- (c) Seller's obligation to deliver the Product is a firm obligation, subject only to Force Majeure and Seller's failure to receive such Product under the Upstream Agreement.

1.2 Reserved.

1.3 Change in Law.

(a) If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law occurring after the Effective Date that modifies the California RPS such that this Confirmation no longer meets the requirements of the California RPS for this Product (a "Change in Law"), Seller shall use commercially reasonable efforts to obtain compliance with such Change in Law, provided that such costs should not be greater than

(the "<u>Capped Amount</u>"). This requirement shall not apply to any Product that was delivered prior to any Change in Law if such Product complied with the California RPS that existed when it was delivered.

(b) The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, subject to Seller's obligation to use commercially reasonable efforts to obtain compliance with a Change in Law up to the Capped Amount, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to

maintain the original intent of the Parties under this Agreement; provided, however, pending any amendment to this Confirmation, to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder in accordance with Applicable Laws as they existed prior to the effectiveness of such new statutes, regulations, or rules; provided, further, that notwithstanding the foregoing or anything to the contrary herein, neither Party shall be obligated to perform any obligation hereunder (other than payment obligations) to the extent that doing so would cause such Party to be materially adversely affected. If, after use of commercially reasonable efforts by Seller to obtain compliance with a Change in Law and within thirty (30) days after initiating discussions to amend this Confirmation in accordance with the preceding sentence ("Negotiation Period"), the Parties have not agreed upon any amendments to this Confirmation or other agreed measures such that the Confirmation and/or the Product meet(s) the requirements of the California RPS, either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, except that Buyer shall remain liable to Seller for any Product delivered prior to the effective date of such termination (including for any RECs associated with Energy already delivered to Buyer).

1.4 RPS Non-Modifiable Standard Terms and Conditions (STC).

STC 6: Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-modifiable. D.07-11-025, Attachment A, D.08-04-009]

STC REC-1: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

STC REC-2: Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

STC 17: Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17, Nonmodifiable. D.07-11-025, Attachment A, D.08-04-009]

The aggregate "commercially reasonable efforts" expenditures for Eligibility (STC 6), Transfer of RECS (STC REC-1), and Change of Law (Section 1.3) are limited to the Capped Amount.

1.5 Project. All Product sold by Seller to Buyer hereunder shall be from the facilities listed in Exhibit A, or subsequently identified pursuant to the requirements of this Confirmation, with Long-Term Contracts and otherwise meeting the Seller representations, warranties and covenants set forth herein (collectively, the "Project"). Seller has the right to amend the list of facilities in Exhibit A from time to time with written notice prior to the delivery of Energy from such facility or facilities. Notwithstanding any provision herein to the contrary, Seller may only deliver Product to Buyer from non-emitting, zero-emission generating facilities. Further, Seller agrees to deliver Product that is hundred percent (100%) from solar generating resources only.

1.6 Seller Representations, Warranties and Covenants.

- (a) Seller represents, warrants and covenants, as of the Effective Date and throughout the Delivery Term, that:
 - (i) Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
 - (ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity;
 - (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;
 - (iv) The facilities included in the Project each: (a) have a first point of interconnection with a California balancing authority, or (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source;
 - (v) This Agreement transfers only Energy and Green Attributes that have been generated during the Delivery Term; and
 - (vi) All Product sold hereunder will be from Long-Term Contracts.

For the avoidance of doubt, during the Delivery Term, Seller shall act on Buyer's behalf with respect to Energy deliveries to the CAISO and CAISO settlement.

(b) Seller makes no representation, warranty or covenant with respect to any portfolio content category designation pursuant to California Public Utilities Code Section 399.16, nor any eligibility of the Product to qualify as excess procurement pursuant to California Public Utilities Code Section 399.13(a)(4)(B).

2. <u>MONTHLY BILLING SETTLEMENT</u>.

- 2.1 <u>Monthly Cash Settlement Amount</u>. Buyer shall pay Seller the "<u>Monthly Cash Settlement Amount</u>," in arrears, for each Calculation Period in the amount equal to the sum of (a) plus (b) minus (c), where:
 - equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received pursuant to Section 1.1(a) during that hour;
 - (b) equals the product of the Green Attributes Price multiplied by the lesser of (i) the CAISO Energy scheduled, delivered and received pursuant to Section 1.1(a) during that hour, and (ii) the quantity of Green Attributes (in MWhs) Seller expects to deliver or credit to Buyer's WREGIS account pursuant to Section 1.1(b) during the applicable Calculation Period; and
 - (c) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received pursuant to Section 1.1(a) during that hour.
- 2.2 Payment Due Date. Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be made in arrears and due and payable on or before the later of (i) the twentieth (20th) day of the month in which Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days, or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller for the applicable Calculation Period. The invoice shall include a statement detailing the portion of Product transferred to Buyer during the applicable Calculation Period. The invoice shall include a statement detailing the quantity of Product delivered to Buyer during the Calculation Period. The Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Buyer at the time of the invoice or payment for the Calculation Period with which they are associated. Seller shall promptly transfer Green Attributes to Buyer after their creation in accordance with Section 1.1(b).

2.3 <u>Annual True-Up</u>.

(a) Monthly Cash Settlement Amount Annual True-Up. After the CPUC issues the Final Adder for RPS in November of each calendar year, Seller shall calculate the true-up for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amounts (the "Annual True-Up"). The Annual True-Up shall be calculated for any period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the difference between the Forecast Adder for RPS and the Final Adder for RPS, multiplied by (ii) the quantity of Green Attributes (in MWh) Seller delivered to, or expects to be delivered or credited to, Buyer's WREGIS account

- pursuant to Section 1.1(b) (the "<u>True-Up Payment</u>"). If the True-Up Payment is a positive amount, such amount is owed by Seller to Buyer, and if the True-Up Payment is a negative amount, such amount is owed by Buyer to Seller.
- (b) <u>True-up Payments</u>. Within thirty (30) Business Days after the Final Adder for RPS is issued each calendar year, Seller shall issue an invoice to Buyer for amounts owed by, or due to, Seller, as applicable, resulting from the Annual True-Up. Subject to the other terms of this Agreement, no interest shall be paid on the amount of any adjustments due to the publishing of a Final Adder for RPS. Payment for the Annual True-Up shall be due and payable by the owing party on or before the due date for the next monthly invoice and shall be netted pursuant to Section 6.4 of the Master Agreement.
- If a Market Disruption Event of a Price Source occurs with respect to the Forecast Adder for RPS, the Parties hereby agree that during such period the Forecast Adder for RPS is unavailable, the Green Attributes Price shall be the Alternate Monthly REC Market Price defined herein. Notwithstanding Section 10.16 of the Master Agreement, "Market Disruption Event" means, with respect to the Forecast Adder for RPS or Final Adder for RPS (each, a "Price Source"), any of the following events: (a) the failure to announce or publish the specified Price Source by the payment due dates set forth in Section 2.2 and Section 2.3; (b) the temporary or permanent discontinuance or unavailability of the Price Source; or (c) a material change in the formula for or the method of determining a Price Source. The "Alternate Monthly REC Market Price" shall be the Final Adder for RPS last issued by the CPUC.
- LIMITED ASSIGNMENT. Notwithstanding anything in the Agreement to the contrary, Buyer 3. may make a limited assignment in connection with a municipal prepayment financing transaction to an entity (such entity, "Limited Assignee") that has, or that provides a parent guaranty in a form and substance reasonably acceptable to Seller from an entity with, an Investment Grade Credit Rating, of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment (x) shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement and (y) shall not relieve Buyer of any of its obligations under this Confirmation in any respects, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed form of agreement substantially in the form attached hereto as Exhibit B (subject to the Parties' good faith negotiation to finalize such agreement), or as otherwise reasonably acceptable to Seller. Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with antimoney laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) in good faith cooperate and work with Buyer and Limited Assignee to agree on such assignment agreement.
- 4. TAXES AND FEES. Seller shall pay or cause to be paid all taxes on or with respect to the Product or this Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes on or with respect to the Product or this Transaction at and from the Delivery Point. As used herein "taxes" means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein.

5. FORCE MAJEURE. If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party's giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure.

6. REMEDIES FOR FAILURE TO DELIVER/RECEIVE.

- 6.1 If Seller fails to deliver all or part of the Product under this Agreement, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer within ten (10) Business Days of invoice receipt, an amount for such deficiency equal

 The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
- 6.2 If Buyer fails to receive all or part of the Product pursuant to this Agreement and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller within ten (10) Business Days of invoice receipt, an amount for such deficiency equal

 The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
- 6.3 In addition to Seller's remedies under Section 6.2 above, Seller's obligation to deliver the Contract Quantity may be reduced at Seller's option in the event Buyer fails to deliver, for any reason, any portion of the contract quantity of product set forth in that certain confirmation between Party A and Party B of even date herewith ("Related Confirmation"); provided, however, that Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Buyer failed to deliver under the Related Confirmation. Seller's rights under this provision are cumulative and in addition to Seller's rights under the Related Confirmation.

7. <u>REMEDIES UPON DEFAULT</u>.

- 7.1 <u>Liquidated Damages</u>. Buyer and Seller agree this Section 7 in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.
- 7.2 Remedies. If either Party is subject to an Event of Default, then the other Party (the "Non-Defaulting Party") may select any or all of the following remedies: (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") on which the Transaction will be terminated (the "Terminated Transaction"), accelerate all amounts owing between the Parties and liquidate and terminate the Transaction (ii) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to this Section 7, (iii) suspend performance, and (iv) exercise such remedies as provided in this Agreement, including an action for damages (except as limited by Section 7.5).
- 7.3 <u>Termination Payment.</u> With respect to any Terminated Transaction:

- (a) The Non-Defaulting Party shall aggregate into a single liquidated amount expressed in U.S. Dollars payable by the Defaulting Party or the Non-Defaulting Party, as applicable: (i) its Losses or Gains, and Costs, in each case solely in respect of the undelivered portion of the Contract Quantity for each year of the Delivery Term, *minus* (ii) any and all other amounts due and owing to the Defaulting Party under this Agreement, *plus* (iii) any and all other amounts due and owing to the Non-Defaulting Party under this Agreement (the "Termination Payment"). If the Termination Payment is a positive number, the Defaulting Party will pay it to the Non-Defaulting Party; if it is a negative number, the Non-Defaulting Party will pay the absolute value of the Termination Payment to the Defaulting Party.
- (b) Any Termination Payment due under subsection (a) shall be due within ten (10) Business Days following the Defaulting Party's receipt of notice of the Termination Payment.
- (c) 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; provided, that in no event will the Non-Defaulting Party be required to use or change its utilization of its owned or controlled assets or market positions to mitigate its Costs, Losses and damages.
- 7.4 <u>Calculation Disputes</u>. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party will, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.
- 7.5 <u>Limitation on Damages</u>. The Defaulting Party's liability will be limited to the Termination Payment as set forth in Section 7.3; provided, however, the Defaulting Party's liability under this Agreement including for any Termination Payment,
- Exclusive Remedy. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY 7.6 SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE. OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE PRODUCT AT LAW OR IN EQUITY ARE HEREBY WAIVED.
- **8. CREDIT TERMS**. Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

- 9. WAIVER. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 10. <u>COUNTERPARTS</u>. This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- 11. ENTIRE AGREEMENT. This Confirmation sets forth the terms of the Transaction into which the Parties have entered and the Agreement shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be entered into only through a written instrument executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a written instrument executed by both Parties.

DEFINITIONS.

"Annual True-Up" has the meaning set forth in Section 2.3(a).

"Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Generating Facilities, the California RPS, or the terms of the Agreement.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"CAISO Energy" has the meaning set forth in the CAISO Tariff.

"<u>CAISO Tariff</u>" 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 the Federal Energy Regulatory Commission or any successor entity performing similar functions.

"Calculation Period" means each calendar month, or portion thereof, during the Delivery Term.

"California RPS" or "California Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and requiring that a specified percentage of a retail seller's retail sales should be supplied with electricity generated by eligible ERRs, as administered by the CPUC as set forth in applicable CPUC Decisions ("D"), including D.11-12-052, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"CEC" means the California Energy Commission or any successor entity performing similar functions.

"Change in Law" has the meaning set forth in Section 1.3 hereof, and "change in law" when used herein means Change in Law.

"Contract Price" has the meaning set forth on page 1 of this Confirmation.

"Contract Quantity" has the meaning set forth on page 1 of this Confirmation.

"CPUC" means the California Public Utilities Commission or any successor entity performing similar functions.

"Delivery Point" has the meaning set forth on page 1 of this Confirmation.

"<u>Delivery Term</u>" has the meaning set forth on page 1 of this Confirmation.

"Energy" means electrical energy, measured in MWh, generated by the Project.

"Exhibit(s)" shall be those certain Exhibit(s), which are attached hereto and made a part hereof.

"Final Adder for RPS" means the PCIA Market Price Benchmark Final Adder for RPS, (in \$/MWh) for the then-current calendar year, as determined and issued by the CPUC in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, pursuant to D. 19-10-001 and subsequent decisions.

"Forecast Adder for RPS" means the PCIA Market Price Benchmark Forecast Adder for RPS, (in \$/MWh) for the then-current calendar year, as determined and issued by the CPUC in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, pursuant to D. 19-10-001 and subsequent decisions.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) 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; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international

or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Green Attributes Price" has the meaning set forth on page 1 of this Confirmation.

"Index Price" means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the CAISO Tariff) for SP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

"Investment Grade Credit Rating" means a Credit Rating of BBB- or higher by S&P, BBB- or higher by Fitch, or Baa3 or higher by Moody's.

"Long-Term Contract" means any RPS power purchase and sale agreement between SDG&E and a third party generator which has at least ten (10) years remaining in its delivery term as of the Start Date or, for facilities added to Exhibit A after the Start Date, the date when its generation facilities are added to Exhibit A, which Product has been sold by SDG&E to SDCP pursuant to the Upstream Agreement, and from which Seller shall re-sell Product to Buyer under this Agreement, and which otherwise meets the Seller representations and warranties set forth in Section 1.6 of this Agreement.

"Market Disruption Event" has the meaning set forth in Section 2.4 above.

"MW" means megawatt.

"MWh" means megawatt-hour.

"Project" as used herein has the same meaning as "Generating Facility."

"REC Vintage" means the date of Energy generation found on a WREGIS Certificate.

"Related Confirmation" means that certain Confirmation for California RPS-Eligible Electric Energy and Associated Green Attributes between SDCP (as Buyer) and CPA (as Seller) dated as of the date hereof.

"Renewable Energy Credits" or "REC" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific RECs transferred hereunder. Each REC conveys the right to claim title to all attributes corresponding to one megawatt of electric energy generated by an ERR and is evidenced by the transfer of one WREGIS Certificate.

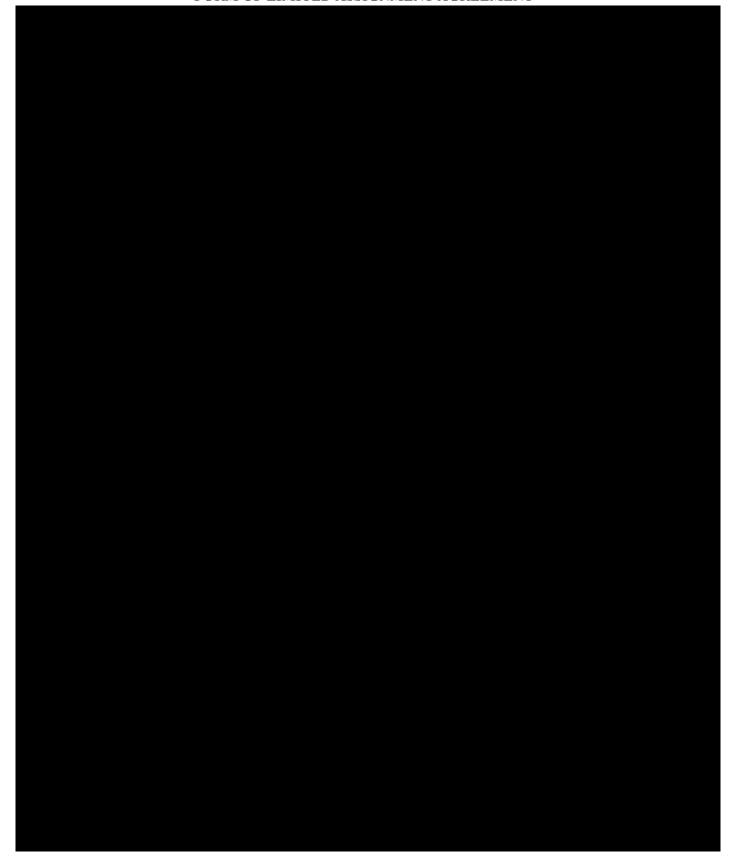
- "Reporting Year" means the period beginning January 1 and continuing until December 31 of the subject year (e.g., Reporting Year 2025 means January 1, 2025 through December 31, 2025).
- "SDG&E" means San Diego Gas & Electric Company.
- "True-Up Payment" has the meaning set forth in Section 2.3(a).
- "Upstream Agreement" means that certain EEI Agreement Confirmation effective as of December 20, 2021, between SDCP and San Diego Gas & Electric Company for Long-Term Renewable Energy (and any subsequent related agreements).
- "WECC" means the Western Electricity Coordinating Council or its successor organizations.
- "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.
- "WREGIS Certificate" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the RECs associated with the Product.
- "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

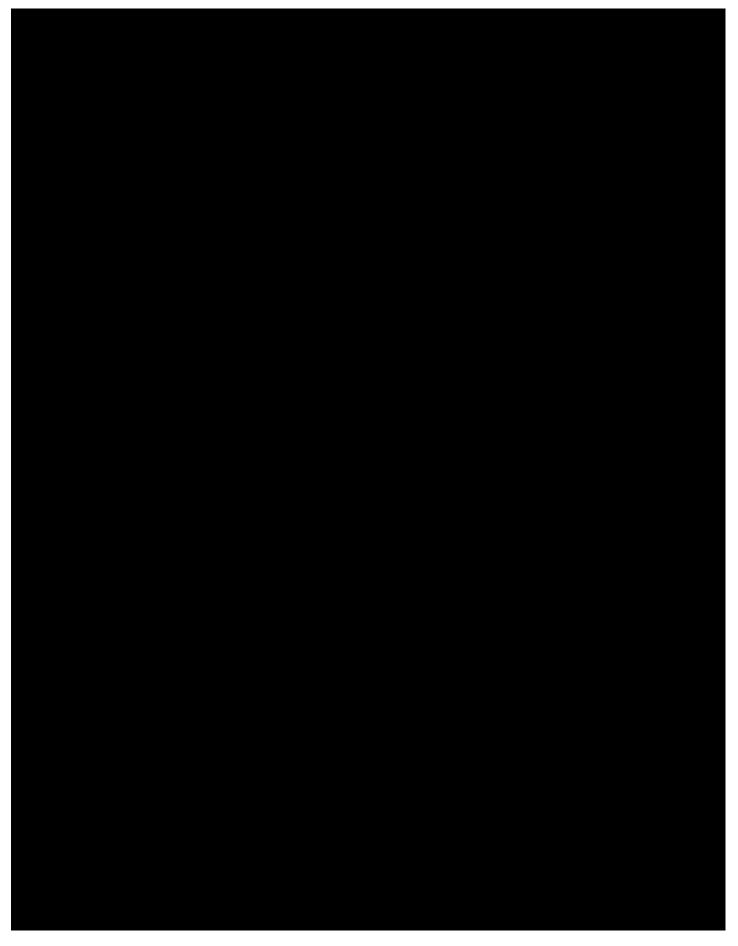
EXHIBIT A





EXHIBIT B FORM OF LIMITED ASSIGNMENT AGREEMENT

















ITEM 14 ATTACHMENT C

CONFIRMATION FOR CALIFORNIA RPS-ELIGIBLE ELECTRIC ENERGY AND ASSOCIATED GREEN ATTRIBUTES

This confirmation ("Confirmation") confirms the Transaction between San Diego Community Power, a California joint powers authority ("Party A") and Clean Power Alliance of Southern California, a California joint powers authority ("Party B"), each individually a "Party" and together the "Parties", dated as of [Month, Date], 2025 (the "Effective Date"), by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by, constitutes part of, and is subject to the terms and provisions of the Edison Electric Institute Master Power Purchase and Sale Agreement dated [Month, Date], [Year] between the Parties (the "Master Agreement"). In the event of a conflict between the provisions of the Master Agreement and this Confirmation, this Confirmation shall control. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments hereto or thereto, shall collectively be referred to as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement or the CAISO Tariff.

The Parties agree as follows:

Seller:	CPA		Buyer:	SDCP
		Eligible Electric Energy and associated Green Attributes s set forth in Exhibit A		
		"Contract Price" "REC Price"	' shall be the su	um of the Energy Price and the REC Price.
Contract Quantity (MWh): REC Vintage 2: REC Vintage 3: REC Vintage 4: REC Vintage 5: REC Vintage 6: REC Vintag		226: 720,000 M 227: 720,000 M 228: 720,000 M 229: 720,000 M 230: 996,000 M 231: 996,000 M 232: 996,000 M 233: 996,000 M 234: 996,000 M	Wh	
Delivery Term: matching delive extend through		ery of RECs were the date that a	2035; provided that, for the sole purpose of with Delivered Energy, such period will all RECs associated with such Delivered om Seller to Buyer in accordance with this	

Delivery Point:	Pricing Node applicable to each Project	
Payment Terms:	See Section 2	
Lockbox (Y/N):	N/A	

This Confirmation is subject to the General Terms and Conditions and Exhibits identified below and attached hereto:	
Exhibit A – Projects	
Exhibit B – Form of Limited Assignment Agreement	

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

SAN DIEGO COMMUNITY POWER, a California joint powers authority	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority	
Sign:	Sign:	
Print: Karin Burns	Print: Lindsay Descagnia	
Title: Chief Executive Officer	Title: Vice President, Power Supply	

GENERAL TERMS AND CONDITIONS

1. PRODUCT.

- 1.1 <u>Product</u>. "<u>Product</u>" means California RPS-Eligible Electric Energy and associated Green Attributes from the Projects set forth in Exhibit A.
- 1.2 Seller's Conveyance of Electric Energy and Green Attributes.
 - (a) Beginning on the first day of the Delivery Term and throughout all applicable months of the Delivery Term, Seller shall deliver, or cause to be delivered, and Buyer shall receive, or cause to be received, at the Delivery Point, the Contract Quantity of the California RPS-Eligible Electric Energy associated with the Product, for the Contract Price and subject to the terms of this Agreement. Seller shall be responsible for any costs or charges imposed on or associated with the California RPS-Eligible Electric Energy or its delivery up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the California RPS-Eligible Electric Energy or its receipt at and from the Delivery Point.
 - (b) Seller shall cause the California RPS-Eligible Electric Energy portion of the Product to be scheduled and delivered on behalf of Buyer to the Delivery Point.
 - (c) During the Delivery Term, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be California RPS-compliant, subject to confirmation by the CEC. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.
 - (d) For each applicable month of the Delivery Term, Seller shall deliver and convey the Green Attributes associated with the California RPS-Eligible Electric Energy delivered pursuant to Section 1.2(a) above promptly following Seller's receipt of the WREGIS Certificates for the Projects. Seller shall deliver and convey such Green Attributes by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes, to Buyer into Buyer's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer; provided further, that if Seller fails to properly transfer such WREGIS Certificates to Buyer in accordance with the above due to an error or omission of an administrative or clerical nature and if such failure can be cured with no harm to Buyer, then Seller may cure such failure within thirty (30) days after notice of such failure. In addition to its other obligations under this provision, Seller shall convey to Buyer WREGIS Certificates from the Projects that are of the same Vintage Year as the California RPS-Eligible Electric Energy that was provided under Section 1.2(a) of this Agreement.
 - (e) Seller's obligation to deliver the Product is a firm obligation, subject only to Force Majeure and Seller's failure to receive such Product under the Upstream Agreement.

1.3 Change in Law.

- If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law occurring after the Effective Date that modifies the California RPS such that this Confirmation no longer meets the requirements of the California RPS for this Product (a "Change in Law"), Seller shall use commercially reasonable efforts to obtain compliance with such Change in Law, provided that such costs should not be greater than (the "Capped Amount"). This requirement shall not apply to any Product that was delivered prior to any Change in Law if such Product complied with the California RPS that existed when it was delivered.
- (b) The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, subject to Seller's obligation to use commercially reasonable efforts to obtain compliance with a Change in Law up to the Capped Amount, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement; provided, however, pending any amendment to this Confirmation, to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder in accordance with Applicable Laws as they existed prior to the effectiveness of such new statutes, regulations, or rules; provided, further, that notwithstanding the foregoing or anything to the contrary herein, neither Party shall be obligated to perform any obligation hereunder (other than payment obligations) to the extent that doing so would cause such Party to be materially adversely affected. If, after use of commercially reasonable efforts by Seller to obtain compliance with a Change in Law and within thirty (30) days after initiating discussions to amend this Confirmation in accordance with the preceding sentence ("Negotiation Period"), the Parties have not agreed upon any amendments to this Confirmation or other agreed measures such that the Confirmation and/or the Product meet(s) the requirements of the California RPS, either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party, except that Buyer shall remain liable to Seller for any Product delivered prior to the effective date of such termination (including for any RECs associated with California RPS-Eligible Electric Energy already delivered to Buyer).

1.4 RPS Non-Modifiable Standard Terms and Conditions (STC).

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

output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-modifiable. D.07-11-025, Attachment A, D.08-04-009]

STC REC-1: Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

STC REC-2: Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

STC 17: Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17, Nonmodifiable. D.07-11-025, Attachment A, D.08-04-009]

The aggregate "commercially reasonable efforts" expenditures for Eligibility (STC 6), Transfer of RECS (STC REC-1), and Change of Law (Section 1.3) are limited to the Capped Amount.

- 1.5 <u>Project</u>. Each of the Projects listed in <u>Exhibit A</u> shall be a "<u>Project</u>" subject to the generating facility no longer being a Project upon: (a) the Project being removed from the Upstream Agreement or (b) the conclusion of the delivery term for a Project designated as "Long-Term" in <u>Exhibit A</u>. Notwithstanding any provision herein to the contrary, Seller may only deliver Product to Buyer from non-emitting, zero-emission Projects. Further, Seller agrees to deliver Product that is one hundred percent (100%) solar generating resources only.
- 1.6 Seller Representations, Warranties and Covenants.
 - (a) Seller represents, warrants and covenants, as of the Effective Date and throughout the Delivery Term of this Confirmation:
 - (i) it has the right to sell all right, title, and interest in the Product agreed to be delivered hereunder;

- (ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity;
- (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;
- (iv) the electric energy generated with the Green Attributes delivered under this Agreement was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner;
- (v) a Project either (i) has a first point of interconnection with a California balancing authority, or a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area; or (ii) has an agreement to dynamically transfer electricity to a California balancing authority; or, if (i) or (ii) are not applicable, a Project and the agreement executed by SCE for such Project meet the conditions in California Public Utilities Code Section 399.16(d);
- (vi) This Agreement transfers only California RPS-Eligible Electric Energy and Green Attributes that have been generated during the Delivery Term; and
- (vii) All Product sold hereunder will be from Long-Term Contracts.
- (b) Seller makes no representation, warranty or covenant with respect to any portfolio content category designation pursuant to California Public Utilities Code Section 399.16 nor any eligibility of the Product to qualify as excess procurement pursuant to California Public Utilities Code Section 399.13(a)(4)(B).
- (c) To the extent a change in law occurs after execution of this Confirmation that causes Seller's representation and warranty in Sections 1.6(a)(i)-(ii) and Section 1.6(b) 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. "Commercially reasonable efforts" shall not require Seller to incur out-of-pocket expenses in excess of

For the avoidance of doubt, during the Delivery Term, Seller shall act on Buyer's behalf with respect to California RPS-Eligible Electric Energy deliveries to the CAISO and CAISO settlement.

2. MONTHLY BILLING SETTLEMENT.

2.1 <u>Monthly Payment</u>. Buyer shall pay Seller the "<u>Monthly Cash Settlement Amount</u>", in arrears, for each Calculation Period in the amount equal to the sum, of (A) plus (B) minus (C), where:

A = the sum, over all hours of the Calculation Period, of (i) the applicable Energy Price for each hour of Delivered Energy within the applicable CAISO market (i.e. integrated forward

market, fifteen minute, and/or Real-Time Market) multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market; and

B = the REC Price multiplied by the quantity of Green Attributes (in MWh) that will be conveyed as described in Section 1.2(d) and that are associated with the Delivered Energy in the Calculation Period; and

C = the sum, over all hours of the Calculation Period, of (i) the applicable Energy Price for each hour of Delivered Energy within the applicable CAISO market (i.e. integrated forward market, fifteen minute, and/or Real-Time Market) multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market.

Such Monthly Cash Settlement Amount constitutes payment for the Product, including the Green Attributes, for such applicable Calculation Period. Buyer shall be obligated to make such payments with respect to each applicable Calculation Period notwithstanding the fact that the Green Attributes associated with a particular Calculation Period may be delivered or credited to Seller's WREGIS account subsequent to the conclusion of the applicable Calculation Period in accordance with Section 1.2(d).

- Annual True-Up of REC Price. If the CPUC publishes the "Calculation of the Market Price Benchmarks for the Power Charge Indifferent Adjustment Forecast and True Up" which has a final "RPS Adder" for a calendar year that differs from the REC Price invoiced to and paid by Buyer for the Product for that same calendar year, Seller will adjust future invoices to account for such differences. Subject to the other terms of this Agreement, no interest shall be paid on the amount of any adjustments due to the publishing of a final "RPS Adder." If this Confirmation has terminated and a final "RPS Adder" is published that results in a Party owing a payment to the other Party, such payment shall be netted pursuant to Section 6.4 of the Master Agreement.
- 2.3 Payment Due Date. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the later of (a) the twentieth (20th) day of the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day, and (b) the tenth (10th) Business Day after Buyer's receipt of Seller's invoice. The Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Buyer at the time of the invoice or payment for the Calculation Period with which they are associated. Seller shall promptly transfer Green Attributes to Buyer after their creation in accordance with Section 1.2(d).
- any make a limited assignment in connection with a municipal prepayment financing transaction to an entity (such entity, "Limited Assignee") that has, or that provides a parent guaranty in a form and substance reasonably acceptable to Seller from an entity with, an Investment Grade Credit Rating, of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment (x) shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement and (y) shall not relieve Buyer of any of its obligations under this Confirmation in any respects, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed form of agreement substantially in the form attached hereto as Exhibit B (subject to the Parties' good faith negotiation to finalize such agreement), or as otherwise reasonably acceptable to Seller. Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer

and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with antimoney laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) in good faith cooperate and work with Buyer and Limited Assignee to agree on such assignment agreement.

- 4. <u>TAXES AND FEES</u>. Seller shall pay or cause to be paid all taxes on or with respect to the Product or this Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes on or with respect to the Product or this Transaction at and from the Delivery Point. As used herein "taxes" means, but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein.
- 5. FORCE MAJEURE. If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party's giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure.

6. REMEDIES FOR FAILURE TO DELIVER/RECEIVE.

- 6.1 If Seller fails to deliver all or part of the Product under this Agreement, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer within ten (10) Business Days of invoice receipt, an amount for such deficiency equal

 The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
- 6.2 If Buyer fails to receive all or part of the Product pursuant to this Agreement and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller within ten (10) Business Days of invoice receipt, an amount for such deficiency equal

 The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
- 6.3 In addition to Seller's remedies under Section 6.2 above, Seller's obligation to deliver the Contract Quantity may be reduced at Seller's option in the event Buyer fails to deliver, for any reason, any portion of the contract quantity of product set forth in that certain confirmation between Party A and Party B of even date herewith ("Related Confirmation"); provided, however, that Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Buyer failed to deliver under the Related Confirmation. Seller's rights under this provision are cumulative and in addition to Seller's rights under the Related Confirmation.

7. <u>REMEDIES UPON DEFAULT</u>.

7.1 <u>Liquidated Damages</u>. Buyer and Seller agree this Section 7 in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.

7.2 Remedies. If either Party is subject to an Event of Default, then the other Party (the "Non-Defaulting Party") may select any or all of the following remedies: (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") on which the Transaction will be terminated (the "Terminated Transaction"), accelerate all amounts owing between the Parties and liquidate and terminate the Transaction (ii) withhold any payments due in respect of this Agreement to the extent of its damages pursuant to this Article 7, (iii) suspend performance, and (iv) exercise such remedies as provided in this Agreement, including an action for damages (except as limited by Section 7.5).

7.3 <u>Termination Payment</u>. With respect to any Terminated Transaction:

- (a) The Non-Defaulting Party shall aggregate into a single liquidated amount expressed in U.S. Dollars payable by the Defaulting Party or the Non-Defaulting Party, as applicable: (i) its Losses or Gains, and Costs, in each case solely in respect of the undelivered portion of the Contract Quantity for each year of the Delivery Term, *minus* (ii) any and all other amounts due and owing to the Defaulting Party under this Agreement, *plus* (iii) any and all other amounts due and owing to the Non-Defaulting Party under this Agreement (the "Termination Payment"). If the Termination Payment is a positive number, the Defaulting Party will pay it to the Non-Defaulting Party; if it is a negative number, the Non-Defaulting Party will pay the absolute value of the Termination Payment to the Defaulting Party.
- (b) Any Termination Payment due under subsection (a) shall be due within ten (10) Business Days following the Defaulting Party's receipt of notice of the Termination Payment.
- (c) The 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; provided, that in no event will the Non-Defaulting Party be required to use or change its utilization of its owned or controlled assets or market positions to mitigate its Costs, Losses and damages.
- 7.4 <u>Calculation Disputes</u>. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party will, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute.
- 7.5 <u>Limitation on Damages</u>. The Defaulting Party's liability will be limited to the Termination Payment as set forth in Section 7.3; provided, however, the Defaulting Party's liability under this Agreement including for any Termination Payment,
- 7.6 Exclusive Remedy. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE

OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. ALL OTHER REMEDIES OR DAMAGES FOR FAILURE TO SELL OR PURCHASE PRODUCT AT LAW OR IN EQUITY ARE HEREBY WAIVED.

- **8. CREDIT TERMS.** Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.
- **WAIVER.** No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- **COUNTERPARTS**. This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- 11. ENTIRE AGREEMENT. This Confirmation sets forth the terms of the Transaction into which the Parties have entered and the Agreement shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be entered into only through a written instrument executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a written instrument executed by both Parties.

12. <u>DEFINITIONS</u>.

"Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Projects, the California RPS, or the terms of the Agreement.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"<u>CAISO Tariff</u>" 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 the Federal Energy Regulatory Commission or any successor entity performing similar functions.

"Calculation Period" means each calendar month during the Delivery Term.

"California RPS" or "California Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and requiring that a specified percentage of a retail seller's retail sales should be supplied with electricity generated by eligible ERRs, as administered by the CPUC as set forth in applicable CPUC Decisions ("D"), including D.11-12-052, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"<u>California RPS-Eligible Electric Energy</u>" means electric energy from an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 and 399.16.

"CEC" means the California Energy Commission or any successor entity performing similar functions.

"Change in Law" has the meaning set forth in Section 1.3 hereof, and "change in law" when used herein means Change in Law.

"Contract Price" has the meaning set forth on page 1 of this Confirmation.

"Contract Quantity" has the meaning set forth on page 1 of this Confirmation.

"CPUC" means the California Public Utilities Commission or any successor entity performing similar functions.

"<u>Delivered Energy</u>" means the California RPS-Eligible Electric Energy from a Project that is delivered and scheduled into either the Real Time-Market and/or Day-Ahead Market by Seller on behalf of Buyer at the Delivery Point.

"Delivery Point" has the meaning set forth on page 1 of this Confirmation.

"<u>Delivery Term</u>" has the meaning set forth on page 1 of this Confirmation.

"Energy Price" shall be Index.

"Exhibit(s)" shall be those certain Exhibit(s), which are attached hereto and made a part hereof.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) Any avoided emission 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; 1 (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include: (i) Any energy, capacity, reliability or other power attributes from a Project, (ii) Production tax credits associated with the construction or operation of a Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) Emission reduction credits encumbered or used by a Project for compliance with local, state, or federal operating and/or air quality permits.

"Index" means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the CAISO Tariff) for NP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

"Investment Grade Credit Rating" means a Credit Rating of BBB- or higher by S&P, BBB- or higher by Fitch, or Baa3 or higher by Moody's.

"Long-Term Contract" means any RPS power purchase and sale agreement between SCE and a third party generator which has at least ten (10) years remaining in its delivery term as of the Start Date or, for facilities added to Exhibit A after the Start Date, the date when its generation facilities are added to Exhibit A, which Product has been sold by SCE to CPA pursuant to the Upstream Agreement, and from which Seller shall re-sell Product to Buyer under this Agreement, and which otherwise meets the Seller representations and warranties set forth in Section 1.6 of this Agreement.

"REC Vintage" means the date of California RPS-Eligible Electric Energy generation found on a WREGIS Certificate.

"Related Confirmation" means that certain Confirmation for Long-Term RPS Energy and Green Attributes between SDCP (as Seller) and CPA (as Buyer) dated as of the date hereof.

1 Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

[&]quot;MW" means megawatt.

[&]quot;MWh" means megawatt-hour.

[&]quot;Real-Time Market" has the meaning set forth in the CAISO Tariff.

[&]quot;REC Price" has the meaning set forth on page 1 of this Confirmation.

- "Renewable Energy Credits" or "REC" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific RECs transferred hereunder. Each REC conveys the right to claim title to all attributes corresponding to one megawatt of electric energy generated by an ERR and is evidenced by the transfer of one WREGIS Certificate.
- "Reporting Year" means the period beginning January 1 and continuing until December 31 of the subject year (e.g., Reporting Year 2025 means January 1, 2025 through December 31, 2025).
- "SCE" means Southern California Edison Company.
- "Scheduling Period" means each hour of the Delivery Term for a Project.
- "<u>Upstream Agreement</u>" means that certain Voluntary Allocation Agreement between CPA and Southern California Edison Company, with an effective date of July 25, 2022 (and any subsequent related agreements).
- "WECC" means the Western Electricity Coordinating Council or its successor organizations.
- "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.
- "WREGIS Certificate" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the RECs associated with the Product.
- "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

EXHIBIT A

PROJECTS

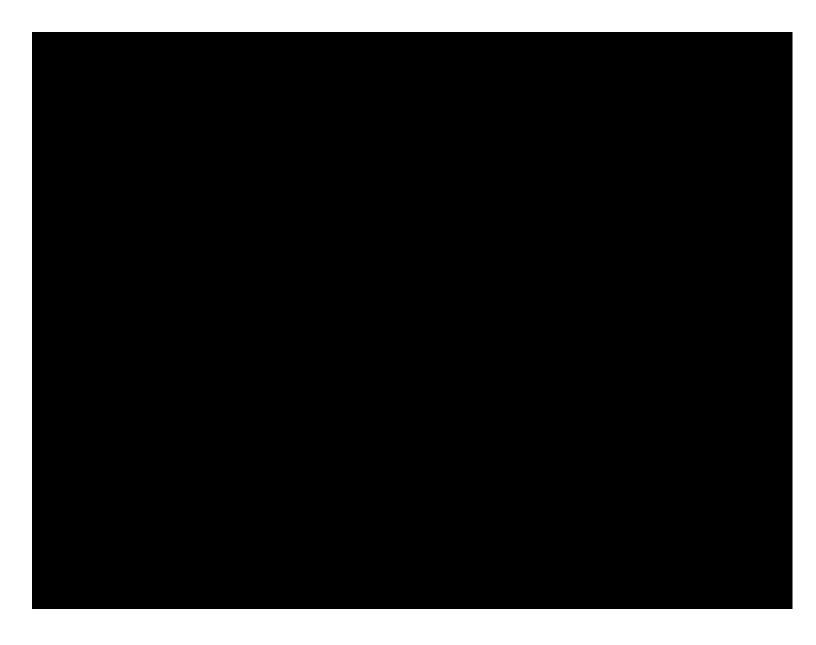
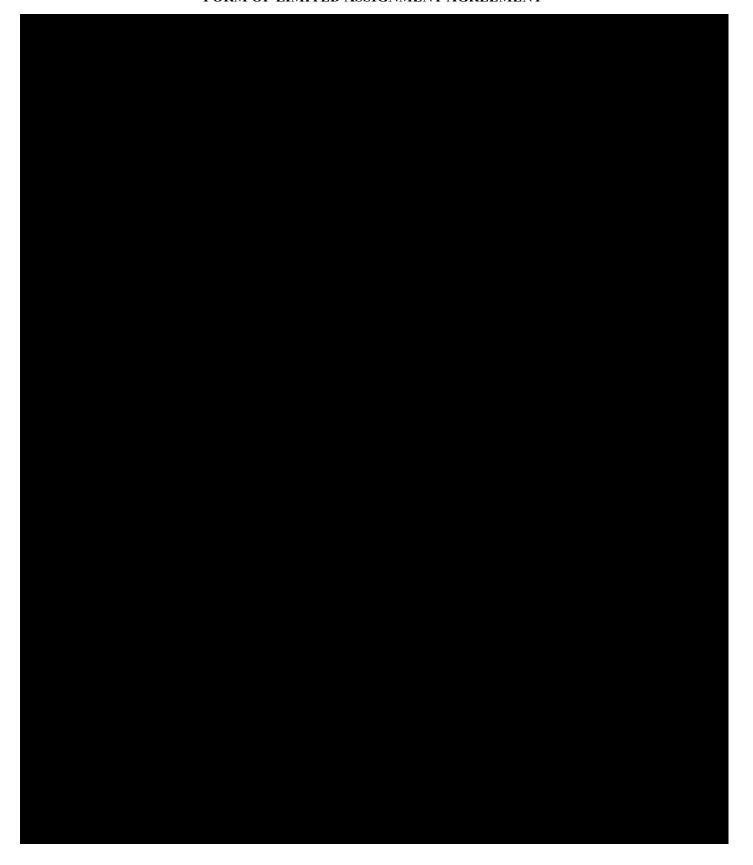
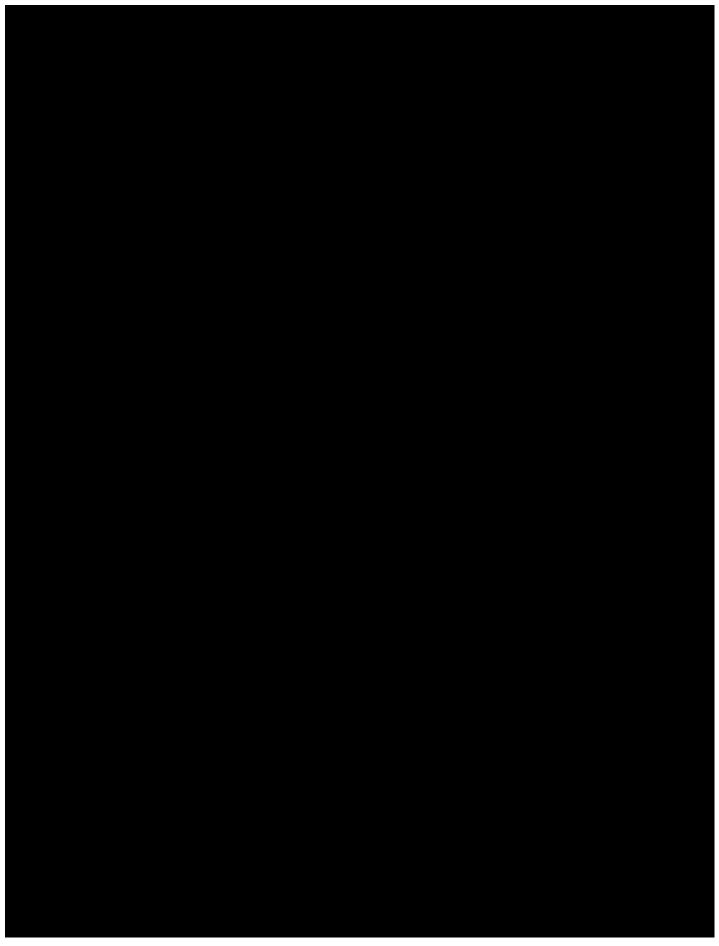


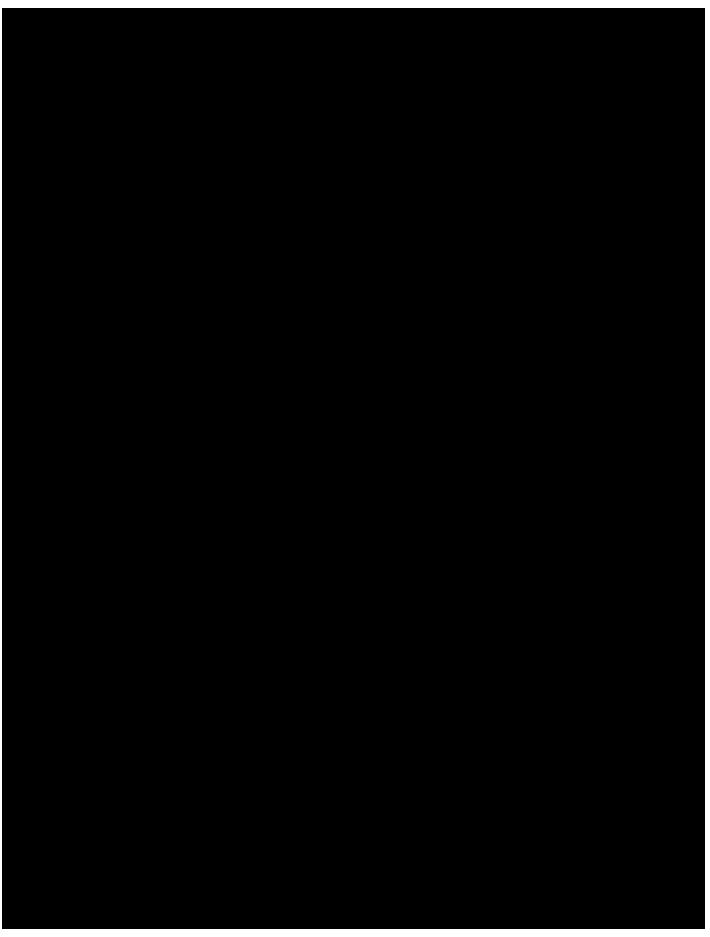


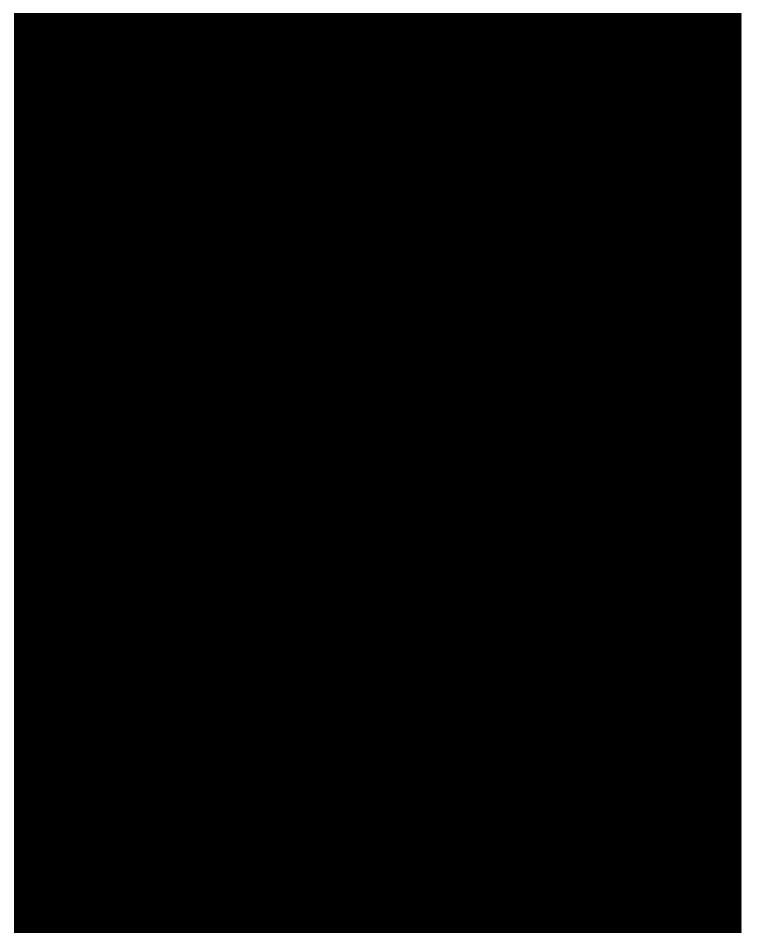


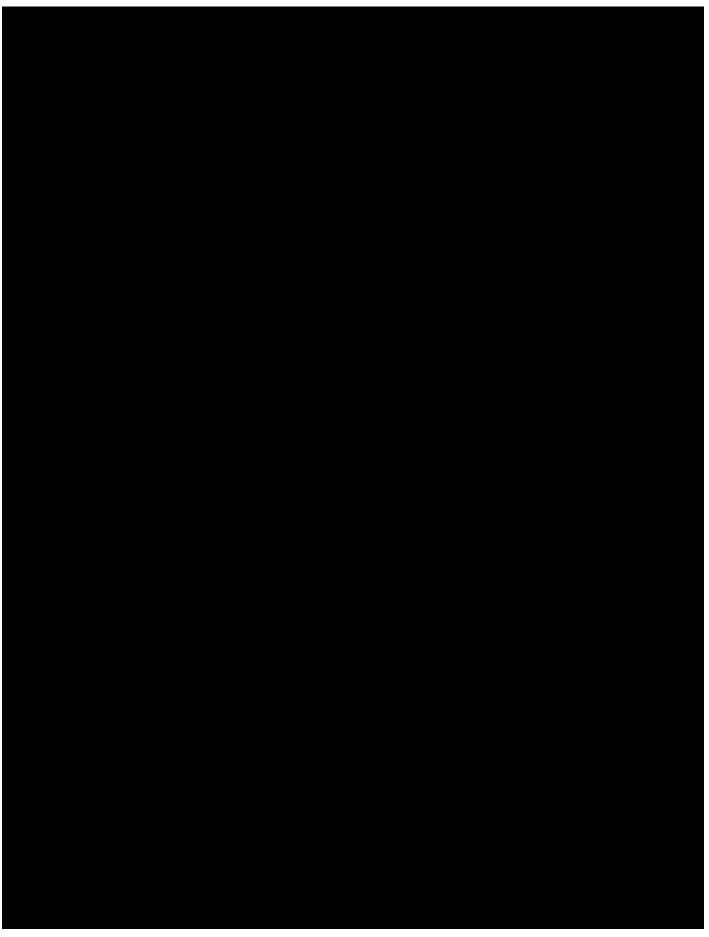
EXHIBIT B FORM OF LIMITED ASSIGNMENT AGREEMENT

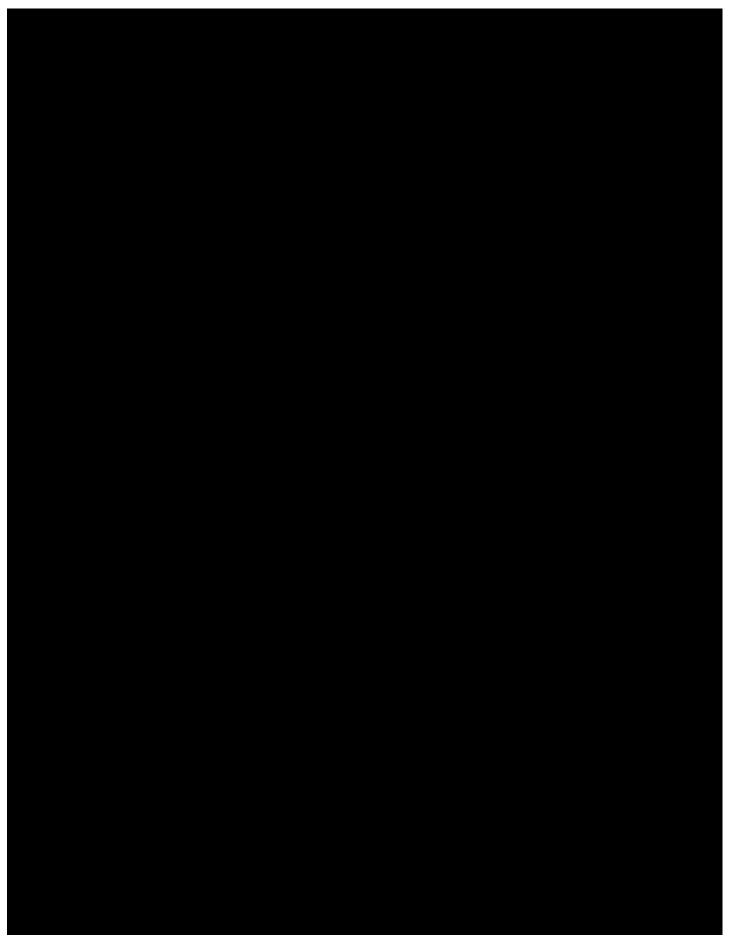


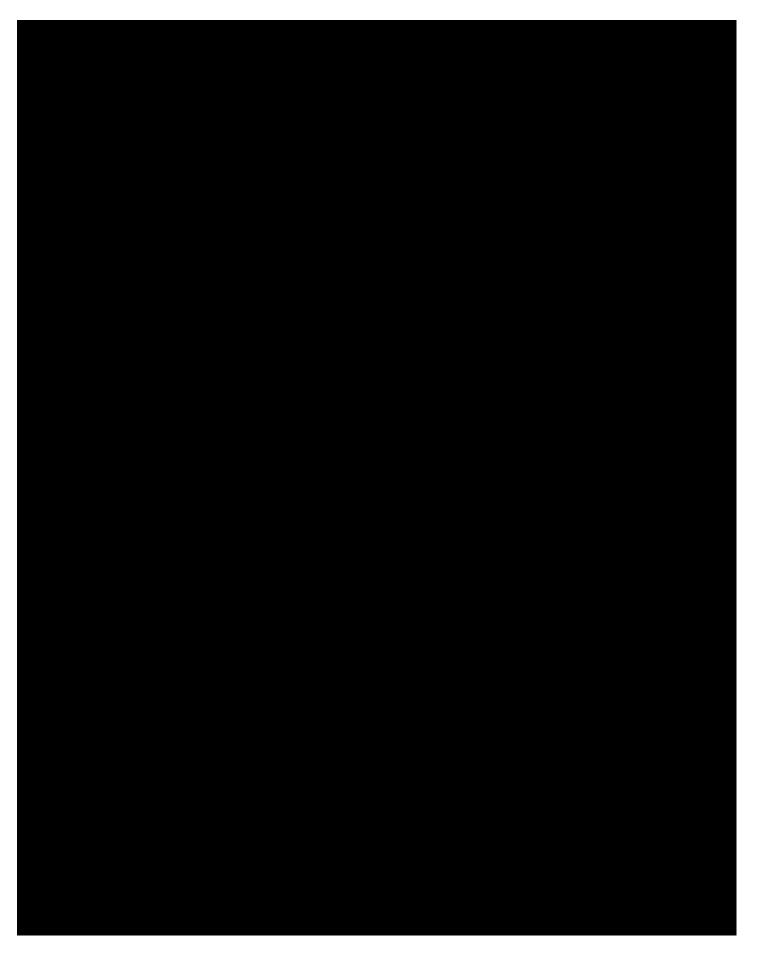


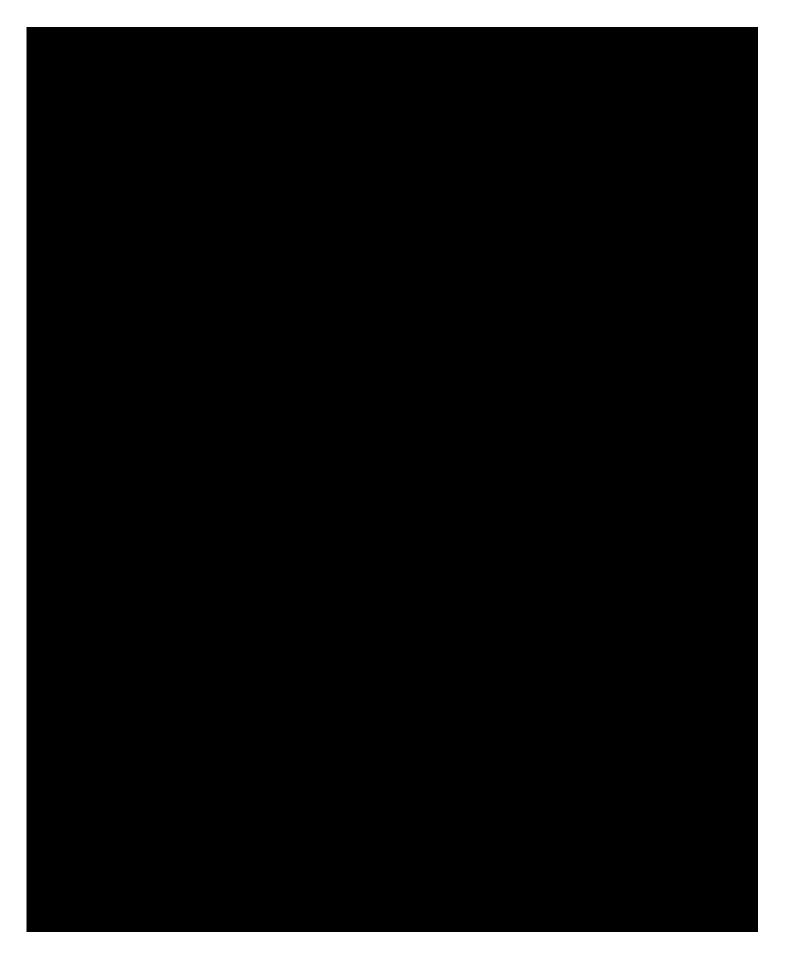




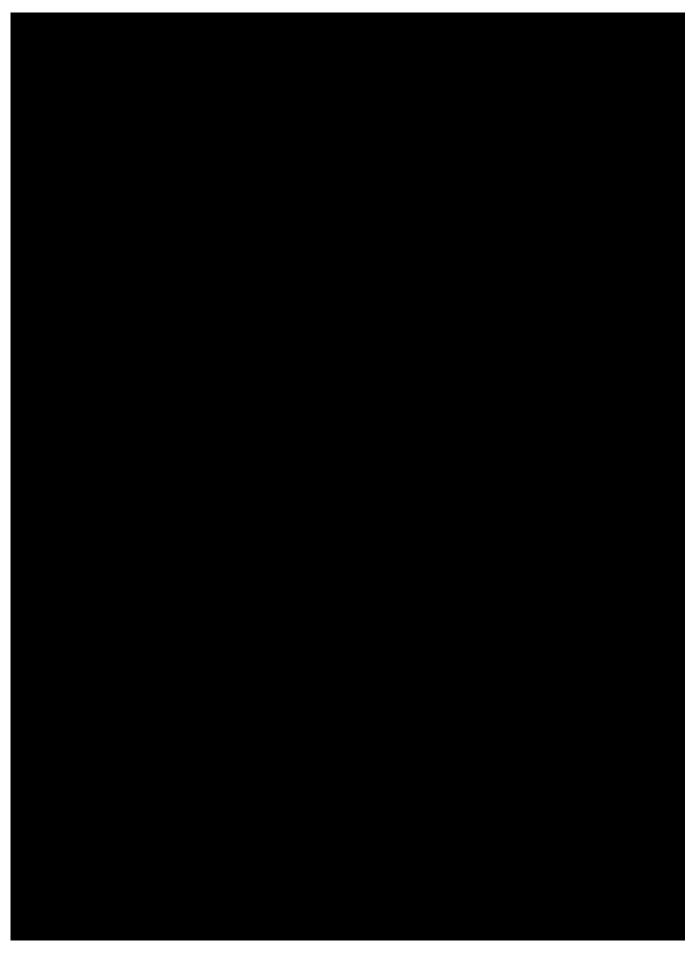






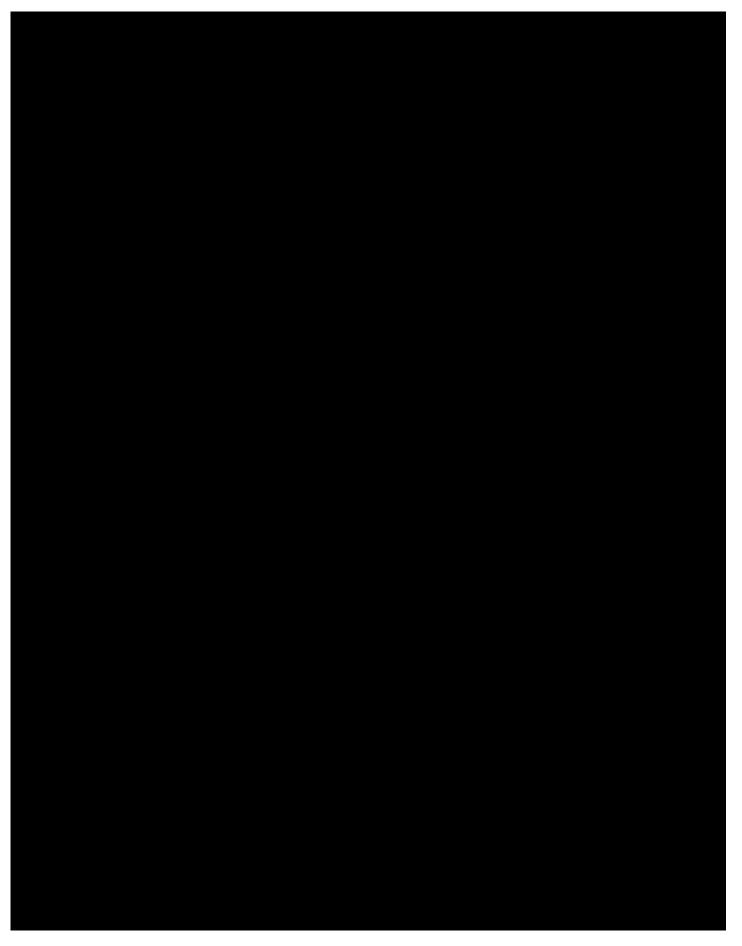






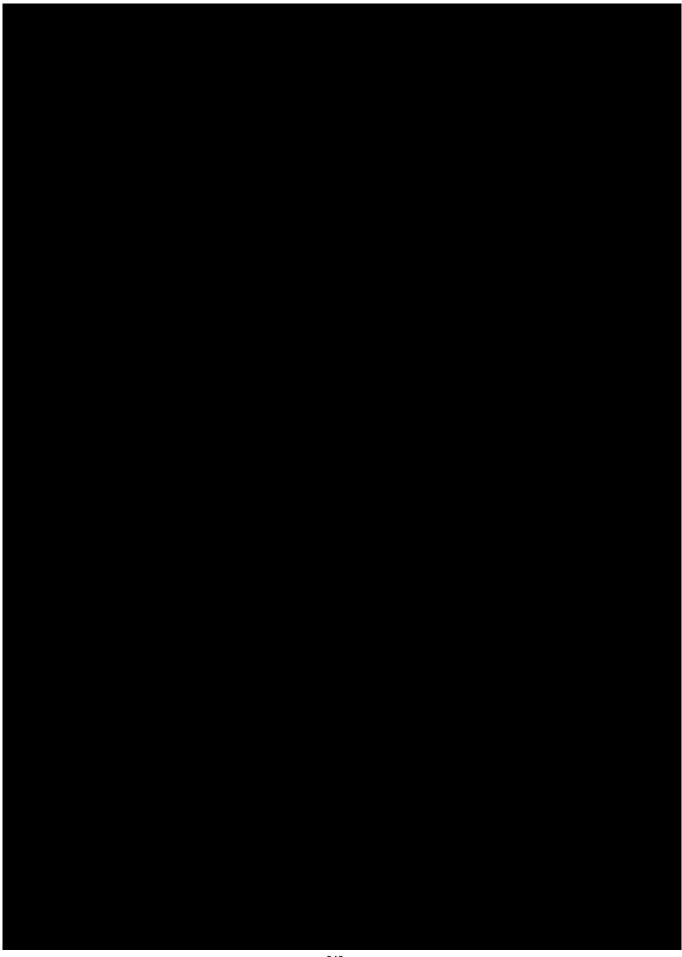












ITEM 14 ATTACHMENT D

PARAGRAPH 10 to the COLLATERAL ANNEX to the EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Between
San Diego Community Power ("Party A")
and
Clean Power Alliance of Southern California ("Party B")

Paragraph 10. <u>Elections and Variables</u>

I. Collateral Threshold.

A. Party A Collateral Threshold.

X (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for Party A on the relevant date of determination, and if Party A's Credit Ratings are not equivalent, the lower Credit Rating shall govern, and if Party A has only one Credit Rating, such Credit Rating shall govern, and if Party A's Credit Rating(s) are below BBBor unrated and/or below Baa3 or unrated, then the Tangible Net Worth amount shall govern, or (b) zero if on the relevant date of determination an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A Collateral Threshold	S&P Credit Rating	Moody's Credit Rating	Tangible Net Worth

(a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for [Party A][Party A's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A Collateral Threshold	Credit Rating
\$	(or above)
\$	
\$	
\$	
\$	Below

П

"Threshold Amount" means (a) The lesser of (i) the amount of the Guaranty Agreement provided to Party B by Party A's Guarantor and (ii) the amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for Party A's Guarantor on the relevant date of determination, and if Party A's Guarantor Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination Party A's Guarantor does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A Collateral Threshold	Credit Rating
\$	(or above)
\$	
\$	
\$ 	Below

The amount of the Guaranty Agreement dated	from	, as amended
from time to time but in no event shall Party A's Colla	teral Thres	hold be greater
than \$		
Other:		

B. Party B Collateral Threshold.

X (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B on the relevant date of determination, and if Party B's Credit Ratings are not equivalent, the lower Credit Rating shall govern, and if Party B has only one Credit Rating, such Credit Rating shall govern, and if Party B's Credit Rating(s) are below BBBor unrated and/or below Baa3 or unrated, then the Tangible Net Worth amount shall govern, or (b) zero if on the relevant date of determination an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B Collateral Threshold	S&P Credit Rating	Moody's Credit Rating	Tangible Net Worth	

(a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

\$ (or above) \$ (or above) \$ Below The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating \$ (or above) \$ (or above)		Party B <u>Collateral Threshold</u>	Credit Rating
\$ Below The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating (or above)		Conacci ai Tin Cshoid	Creat Rating
Below The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating (or above) S (or above)			(or above)
\$ Below The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating \$ (or above) \$ (or above)		T	
The lesser of: (a) the amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B of the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating S (or above) S (or above)		` 	
heading "Party B Collateral Threshold" opposite the Credit Rating for Party B of the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default with respect to Party B has occurred and continuing. Party B Collateral Threshold Credit Rating (or above)		\$	Below
Collateral Threshold Credit Rating \$ (or above) \$ =		heading "Party B Collateral" the relevant date of determination Party B does specified below or an Event of	Threshold" opposite the Credit Rating for Party B on mination, or (b) zero if on the relevant date of not have a Credit Rating from the rating agency
\$		•	Credit Rating
			(or above)
		\$ \$	
<u> </u>		·	
\$Below		\$	Below
☐ The amount of the Guaranty Agreement dated from, as amended from time to time but in no event shall Party B's Collateral Threshold be great than \$		from time to time but in no	
□ Other:		Other:	
Eligible Collateral and Valuation Percentage.			
The following items will qualify as "Eligible Collateral" for the Party specified:	The following	items will qualify as "Eligible	Collateral" for the Party specified:
(A) Cash Party A Party B Valuation Percentage			

(C) Other [] [] _____%

II.

III. Independent Amount.

A. Party A Independent Amount.

- X Party A shall have a Fixed Independent Amount of the greater of \$0 (zero) and (y) the sum of the Independent Amounts, if any, specified with respect to Party A in any Confirmation for an outstanding Transaction. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party A shall have a Full Floating Independent Amount of \$______. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party A shall have a Partial Floating Independent Amount of \$______. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. Party B Independent Amount.

- X Party B shall have a Fixed Independent Amount of the greater of (x) \$0 (zero) and (y) the sum of the Independent Amounts, if any, specified with respect to Party B in any Confirmation for an outstanding Transaction. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party B shall have a Full Floating Independent Amount of \$______. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party B shall have a Partial Floating Independent Amount of \$_______. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

- A. Party A Minimum Transfer Amount:
- B. Party B Minimum Transfer Amount:

provided that, in each case, (i) if the Party is a Defaulting Party at the time, its Minimum Transfer Amount will be zero, (ii) if a Secured Party is holding an amount of Performance Assurance at the time, the Secured Party's Collateral Requirement is, or is deemed to be, zero at the time, and, but for its Minimum Transfer Amount, the Secured Party would be required to make a Transfer under

Paragraph 4, the Minimum Transfer Amount for the Secured Party will be zero, and (ii) if no Transactions are outstanding, then the Minimum Transfer Amount for both Parties will be zero.

V. Rounding Amount.

A. Party A Rounding Amount: \$10,000

B. Party B Rounding Amount: \$10,000

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- Party A or Party A's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default; (2) Party A's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- Federal Funds Effective Rate the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- \Box Other zero percent (0.00%)

B. Party B Eligibility to Hold Cash.

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- Party B or Party B's Custodian shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default; (2) Party B's Custodian, if any, is a Qualified Institution; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- Federal Funds Effective Rate the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- \Box Other zero percent (0.00%)

VII. Notification Time.

☑ Other - 10:00 a.m. Pacific Prevailing Time on a Local Business Day

VIII. Demands and Notices.

All demands, specifications and notices to Party A and Party B under this Collateral Annex will be as set forth on the Cover Sheet to the Master Agreement.

IX. General.

Amendments to Introductory Paragraph:

(i) The first paragraph of the introduction shall be amended to read as follows:

"This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the "Collateral Annex") supplements, forms a part of, and is subject to the EEI Master Power Purchase and Sale Agreement between San Diego Community Power, a California joint powers authority ("Party A") and Clean Power Alliance of Southern California, a California joint powers authority ("Party B"), including the Cover Sheet and any other annexes thereto (as amended and supplemented from time to time, the "Agreement"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given to such terms in the Agreement."

Amendments to Definitions:

(i) The definition of "Credit Rating" is amended and restated in its entirety as follows:

""Credit Rating" shall mean, with respect to an entity on any date of determination, the respective public or private rating then assigned to its unsecured and senior, long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. For the avoidance of doubt, a Party shall not be obligated to recognize a private rating of the other Party unless such Party has access to the private rating of the Party seeking to rely on such rating. Such access shall be granted via a portal controlled by the relevant rating agency."

- (ii) "Credit Rating Event" shall be amended by replacing "6(a)(iii)" with "6(a)(ii)".
- (iii) "Downgraded Party" shall be amended by replacing "6(a)(i)" with "6(a)(ii)".

- (iv) The definition of "<u>Letter of Credit</u>" shall be deleted from both the Master Agreement, as amended by the Cover Sheet thereto, and the Collateral Annex and replaced with the following:
 - "Letter(s) of Credit" shall mean an irrevocable, standby Letter of Credit, issued by a Qualified Institution, in such form as may be reasonably acceptable to the beneficiary thereof, with such provisions as the issuing bank may require and as may be reasonably acceptable to the beneficiary thereof."
- (v) "Letter of Credit Default" shall be amended as follows:
 - a. Clause (a) shall be deleted and replaced with the following phrase: "(a) the issuer of such Letter of Credit shall fail to be a Qualified Institution"; and
 - b. A new clause (f) shall be added after the existing clause (e) and immediately before the phrase "provided, however" as follows:
 - "(f) the Pledgor fails to extend or replace such Letter of Credit at least twenty (20) Local Business Days prior to its expiration."
- (vi) "Local Business Day" shall be amended by replacing the word "day" with "Business Day".
- (vii) "Notification Time" shall be amended by replacing "11:00, New York time" with "10:00 a.m. Pacific Prevailing Time on a Local Business Day."
- (viii) "Performance Assurance" shall be amended by replacing "6(a)(iv)" with "6(a)(iii)".
- (ix) "Qualified Institution" shall be amended to read as follows:
 - ""Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with a Credit Rating of at least (a) "A-" by S&P or "A3" by Moody's, and (b) having assets of at least TEN BILLION AND 00/100 DOLLARS (\$10,000,000,000.00)."
- (x) "Reference Market-maker" is amended by adding "which is not an Affiliate of either Party" after the words "leading dealer" in the first line thereof.
- (xi) "Secured Party" shall be amended by replacing "3(b)" with "3(a)".
- (xii) "<u>Tangible Net Worth</u>" of a Party shall mean on any date an amount equal to the value of Total Assets minus Total Liabilities, in each case determined by reference to the audited (or unaudited, if audited financials are not available) financial statements of such Party in accordance with GAAP.
- (xiii) "<u>Total Assets</u>" of a Party shall mean, at any date, the aggregate amount of all assets of such Party, which would be properly classified as total assets shown on the balance sheet of such Party on such date in accordance with GAAP.
- (xiv) "<u>Total Liabilities</u>" of a Party shall mean, at any date, the aggregate amount of all liabilities of such Party which would be properly classified as total liabilities shows on the balance sheet of such Party on such date in accordance with GAAP.

Amendments to Paragraph 4:

(i) The second to last sentence of Paragraph 4, "Delivery of Performance Assurance", shall be amended to read as follows:

"Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by not later than the close of business on the third Local Business Day; and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by not later than the close of business on the fourth Local Business Day."

(ii) The following is added after the last sentence of Paragraph 4:

"Notwithstanding any other provision in this Master Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified herein, regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such Party."

Amendments to Paragraph 5:

- (i) Paragraph 5(a) shall be amended by inserting "so long as the amount of the requested reduction is equal to or greater than the Minimum Transfer Amount" after "the Pledging Party for the benefit of the Secured Party" in the third line thereof.
- (ii) Paragraph 5(a) shall be further amended by deleting "before the Notification Time on a Business Day" and replacing it with "before the Notification Time on a Local Business Day".

Amendments to Paragraph 6:

- (i) Paragraph 6(a)(ii)(A) shall be amended by inserting "(other than subparagraph (B) below)" after "the provisions of this Paragraph 6(a)(ii)" in the first line thereof.
- (ii) Paragraph 6(a)(ii)(B) shall be amended by deleting "to perfect the security interest of the Non-Downgraded Party" and replacing it with "to perfect the security interest of the Downgraded Party".
- (iii) Paragraphs 6(b)(iii) and 6(b)(iv) are deleted and replaced in their entirety as follows:
 - "(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first (1st) Local Business Day after the occurrence thereof (or the second (2nd) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).
 - (iv) Notwithstanding anything herein to the contrary, (A) upon or at any time after the occurrence and during the continuation of an Event of Default with respect to the Pledging Party or (B) if an Early Termination Date has occurred or been designated and there exist

any unsatisfied payment Obligations, then the Secured Party may draw on any outstanding Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Pledging Party but have not been paid to the Secured Party within the time allowed for such payments under this Agreement (including any related notice or grace period or both). If a Letter of Credit Default exists with respect to any Letter of Credit provided by or on behalf of the Pledging Party, then the Secured Party may draw on the Letter of Credit subject to such Letter of Credit Default in an amount equal to the entire, undrawn portion of such Letter of Credit. Draws on outstanding Letters of Credit shall be made upon submission to the bank issuing such Letter(s) of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon any Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party."

Amendments to Paragraph 7:

- (i) Paragraph 7(a) is amended as follows:
 - a. deleting the phrase "(i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii)" in lines one and two thereof and by deleting the phrase "(i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii)" in lines six and seven thereof;
 - b. in line 7, by replacing the words "is deemed to occur" with "has been designated"; and
 - c. by adding the words "in the form of Cash" after the phrase "the right to set off any Performance Assurance" in clause (ii) thereof.
- (ii) Paragraph 7(b) shall be amended by deleting it in its entirety and inserting the words "Intentionally Omitted."
- (iii) Paragraph 7(d) is amended and restated in its entirety as follows (with deleted text crossed-out (e.g., erossed out) and added text double underlined (e.g., <u>double underlined</u>) for illustrative purposes only):
 - (d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party (other than an Early Termination Date relating to less than all Transactions where the Secured Party has paid in full all of its obligations that are then due under the Agreement), then:

- (1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including other than any Letter of Credit) and the Interest Amount, if any, to the Pledging Party; and
- (2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance (other than any Letter of Credit), including any such rights and remedies under law then in effect; and (y) to the extent that the Performance Assurance (other than any Letter of Credit) or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance (other than any Letter of Credit) held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party under the terms of any Letter of Credit; and
- (3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.
- (iv) A new Paragraph 7(e) and a new Paragraph 7(f) are added as follows:
 - "(e) The Secured Party will transfer to the Pledging Party any proceeds and Performance Assurance remaining after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d) after satisfaction in full of all amounts payable by the Pledging Party with respect to any Obligations; the Pledging Party will in all events remain liable for any amounts unpaid after liquidation, set-off and/or application under Paragraphs 7(a) and 7(d).
 - (f) When no amounts are or thereafter may become payable by the Pledging Party with respect to any Obligations, the Secured Party will Transfer to the Pledging Party all Performance Assurance and the Interest Amount, if any."

Amendments to Paragraph 8:

- (i) Paragraphs 8(a) and 8(b) are both amended by adding after the third sentence of each paragraph the following sentence: "If the Parties are unable to obtain any quotations for the Secured Party's Net Exposure, the Parties will appoint a mutually acceptable leading market participant in the relevant market to make such calculation and such expense will be shared equally by the Parties."
- (ii) Paragraph 8 is amended by inserting the following new subparagraph 8(c) at the end thereof:
 - "(c) Each quotation from a Reference Market-maker will be for an amount, if any, that would be paid to the Party requesting the quotation (expressed as a negative number) or by the Party requesting the quotation (expressed as a positive number) in consideration of an agreement between such Party (taking into account this Collateral Annex and the existence of any Guarantor with respect to the obligations of such Party) and the quoting Reference Market-maker to enter into a transaction that would have the effect of preserving for the Party requesting the quotation the economic equivalent of any payment or delivery

(whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the Parties in respect of such Transaction or group of Transactions. The costs of retaining Reference Market-makers for the purposes of this Paragraph 8 shall be borne equally by the Secured Party and the Pledging Party. The determination made by such Reference Market-makers shall be binding and conclusive on the Parties absent manifest error."

Amendments to Paragraph 10:

- (i) Paragraph 10 shall be amended by inserting the following new subparagraph 10(VI)(C) at the end thereof:
 - "In lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Performance Assurance in the form of Cash (all of which may be retained by the Pledging Party and shall not be considered Performance Assurance):
 - (x) if the Interest Amount for an Interest Period is a positive number, upon request of the Pledging Party, the Secured Party will transfer to the Pledging Party such Interest Amount by the fifth Business Day after the end of such Interest Period, to the extent that a Collateral Requirement as calculated by the Pledging Party would not be created or increased by that Transfer; any Interest Amount or portion thereof not transferred pursuant to this subsection (x) of this Paragraph will constitute Performance Assurance in the form of Cash and will be subject to the security interest granted under Paragraph 2 to the Collateral Annex."
- (ii) Schedule 1 to the Collateral Annex is deleted in its entirety.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex.

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 to the Collateral Annex to be effective as of the Effective Date of the EEI Master Power Purchase and Sale Agreement between the Parties.

SAN DIEGO COMMUNITY POWER, a California joint powers authority	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
Ву:	Ву:
Name:	Name: Lindsay Descagnia
Title:	Title: Vice President, Power Supply

GLOSSARY OF TERMS

AB – Assembly Bill - An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly, rather than the Senate, is the house of origin in the legislature for the legislation. In California, it is common for legislation to be referred to by its house of origin number (such as, AB 32) even once it becomes law.

AL - Advice Letter - An Advice Letter is a request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief.

ALJ – Administrative Law Judge - ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB – **Air Resources Board** - The California Air Resources Board (CARB or ARB) is the "clean air agency" in the government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AREM – **Alliance for Retail Energy Markets** – a not for profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in selected public policy forums on the state level. AREM represented direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN - Bay Area Regional Energy Network - BayREN offers region-wide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development." CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CALSEIA – California Solar Energy Industries - CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants, and educators. Members' annual dues support professional staff and a lobbyist who represent the common interests of California's solar industry at the Legislature, Governor's Office, and state and local agencies.

CALSLA – California City County Street Light Association - statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable street light electric rates and facilities charges, and disseminating street light related information.

CAM – Cost Allocation Mechanism - the cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CARE – California Alternative Rates for Energy – A State program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – **Communities for a Better Environment** - environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator - A community choice aggregator, sometimes referred to as community choice aggregation, allows local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – **City and County of San Francisco** - The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF, a CCA.

CEC – **California Energy Commission** - the primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – **Coalition for Energy Efficiency** – non-profit comprised of US and Canadian energy efficiency administrators working together to accelerate the development and availability of energy efficient products and services.

CLECA – California Large Energy Consumers Association - an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission - state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.

C&I – Commercial and Industrial – Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – **Direct Access** – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DACC – **Direct Access Customer Coalition** a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community - Disadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

DASR – Direct Access Service Request – Request submitted by C&I customers to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.

- **DR Demand Response -** An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.
- **DRP Distributed Resource Plans -** plans that are required by statute that are intended to identify optimal locations for the deployment of distributed resources.
- **DWR Department of Water Resources** DWR manages California's water resources, systems, and infrastructure in a responsible, sustainable way.
- **ECR Enhanced Community Renewable -** An IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a Developer at a level that meets at least 25% of their monthly electricity demand, but up to 100%. The customer will pay the Developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.
- **ED Energy Division -** The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates.
- **EE Energy Efficiency-** the use of less energy to perform the same task or produce the same result. Energy-efficient homes and buildings use less energy to heat, cool, and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.
- **ELCC Effective Load Carrying Capacity** The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.
- **EPIC Electric Program Investment Charge** The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)
- **ERRA Energy Resource Recovery Account –** ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.
- **ES Energy Storage** the capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.
- **ESA Energy Storage Agreement -** means a battery services contract, a capacity contract, demand response contract or similar agreement.
- **ESP Energy Service Provider -** An energy entity that provides service to a retail or end-use customer.
- **EV Electric Vehicle** a vehicle that uses one or more electric motors for propulsion.
- **FCR Flexible Capacity Requirements -** "Flexible capacity need" is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as "flexible capacity" if they can sustain or increase output, or reduce ramping needs, during the hours of "flexible need." "FCR"

means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions.

GHG – **Greenhouse gas** - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GTSR – **Green Tariff Shared Renewables** – The GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer, and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

ICA – Integration Capacity Analysis - The enhanced integrated capacity and locational net benefit analysis quantifies the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy Resources – A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSM – **Integrated Demand-Side Management** - an approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IMD – Independent Marketing Division - Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E' and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility – A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.

IRP – Integrated Resource Plan – A plan which outlines an electric utility's resource needs in order to meet expected electricity demand long-term.

kW - **Kilowatt** - Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – **Kilowatt-hour** – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCE – Lancaster Choice Energy - the CCA that serves the City of Lancaster, California.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day- ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

LNBA – Locational Net Benefits Analysis - a cost-benefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

LTPP – Long-Term Procurement Rulemaking - This is an "umbrella" proceeding to consider, in an integrated fashion, all of the Commission's electric procurement policies and programs.

MCE – Marin Clean Energy - the first CCA in California that began serving customers in 2010. They serve customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – **Marketing Education and Outreach** - a term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

MW - Megawatt - measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH - Megawatt-hour - measure of energy

NAESCO – National Association of Energy Service Companies – – an advocacy and accreditation organization for energy service companies (ESCOs). Energy Service Companies

contract with private and public sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – **Non-Bypassable Charge** - fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement - a contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council - non-profit international environmental advocacy group.

NP-15 – **North Path 15** – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

OSC – Order to Show Cause - order requiring an individual or entity to explain, justify, or prove something.

ORA – Office of Ratepayer Advocates - the independent consumer advocate within the CPUC, now called Public Advocates office.

PA – Program Administrator (for EE Business Plans) IOUs and local government agencies authorized to implement CPUC-directed Energy Efficiency programs.

PCE – Peninsula Clean Energy Authority - CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables.

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 - RPS Portfolio Content Category 3 - Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statue of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – Proposed Decision – A procedural document in a CPUC Rulemaking that is formally commented on by parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

PG&E – Pacific Gas & Electric - the IOU that serves 16 million people over a 70,000 square mile service area in Northern California.

PHC – Prehearing Conference - CPUC hearing to discuss the scope of a proceeding among other matters. Interested stakeholders can request party status during these.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

PRP – Priority Review Project - transportation electrification pilot projects approved by the CPUC pursuant to SB 350.

PRRR – **Progress on Residential Rate Reform** – Pursuant to a CPUC decision, the IOUs must submit to the CPUC and parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC – Public Utilities Code - California statute that contains 33 Divisions, and the range of topics within this Code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities. Primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act - federal statute passed by Congress to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was meant to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply). The law was created in response to the 1973 energy crisis.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RAM – Renewables Auction Mechanism - a procurement program the Investor-owned Utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs, and any need arising from Commission or legislative mandates.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar

electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer - This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – **Request for Offers** a competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SB – **Senate Bill** - a piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the legislature for the legislation.

SCE – Southern California Edison - the large IOU that serves the Los Angeles and Orange County area.

SCP – Sonoma Clean Power Authority – CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E – San Diego Gas & Electric - the IOU that serves San Diego county, they own the infrastructure that delivers SDCP energy to customers.

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

SUE – Super User Electric - electric surcharge that's intended to penalize consumers for excessive energy use.

SVCE - Silicon Valley Clean Energy - CCA serving Silicon Valley Area.

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

TE – Transportation Electrification - For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles, medium- and heavy-duty trucks, and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TM – Tree Mortality - refers to the death of forest trees and provides a measure of forest health. In the context of energy, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are "unbundled" and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

VAMO – Voluntary Allocation, Market Offer - the process for SDG&E to allocate a proportional share of their renewable portfolio to SDCP and other LSEs within the service territory.