

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

Thursday, June 26, 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 you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board of Directors as a whole through the Chair. Comments may be provided in one of the following manners:

- 1. Providing oral comments during 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.

AGENDA - BOARD OF DIRECTORS - SAN DIEGO COMMUNITY POWER

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 you have anything that you wish to 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

WELCOME

CALL TO ORDER

ROLL CALL

CLOSED SESSION

1. PUBLIC EMPLOYEE(S) PERFORMANCE EVALUATION(S) 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): Law Firm of Best, Best & Krieger LLP Unrepresented employee(s): Chief Executive Officer and General Counsel

CALL TO ORDER – OPEN SESSION

ROLL CALL

REPORT ON CLOSED SESSION

PLEDGE OF ALLEGIANCE

LAND ACKNOWLEDGEMENT

SPECIAL PRESENTATIONS AND INTRODUCTIONS

- Proclamation recognizing outgoing Community Advisory Committee member Gary Jahns
- 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 May 22, 2025, Meeting Minutes
- 2. Receive and File Treasurer's Report for Period Ending April 30, 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 Marketing, Public Relations, and Local Government Affairs
- 7. Receive and File Community Advisory Committee Monthly Report
- 8. Receive and File Update on Regulatory and Legislative Affairs

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.

9. Approve Community Advisory Committee Member for City of Chula Vista

Recommendation: Approve appointment of Alonso Gonzalez to the Community Advisory Committee for the City of Chula Vista.

- 10. Consider Amendments to Executive Employment Agreements
 - a. Approve Amended and Restated Employment Agreement for Chief Executive Officer

Recommendation: Approve Amended and Restated Chief Executive Officer Employment Agreement.

b. Approve First Amendment to Employment Agreement for General Counsel

Recommendation: Approve First Amendment to General Counsel Employment Agreement.

11. Tariffs, Tax Credits and Executive Orders: New-Build Market Outlook Update

Recommendation: Receive and file the Community Power staff status report on federal policy and budget as it relates to clean energy procurement.

12. Public Hearing - AB 2561 - Status of vacancies, recruitment and retention efforts

Recommendation: Hold a public hearing, receive comments, and accept report on the status of Community Power employee vacancy rates and recruitment and retention efforts.

13. Approve the FY 2025-2026 Operating Budget, the FY 2025-2026 Capital Budget, and the FY 2026-2030 Capital Investment Plan

Recommendation: Adopt Resolution No. 2025-06, approving the FY 2025-2026 Operating Budget, the FY 2025-2026 Capital Budget, and the FY 2026-2030 Capital Investment Plan.

14. Approve Update to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations

Recommendation: Adopt Resolution No. 2025-05 approving Addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations, to allow the CEO to approve procurement of California Carbon Allowance (CCA) and Carbon Offset (CO) to meet San Diego Community Power compliance obligations under California's Cap-and-Trade Program.

15. Adoption of Resolution No. 2025-07, 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

Recommendation: Adopt Resolution No. 2025-07, approving parameters under which an energy prepayment transaction can be completed; authorizing and approving documents or "form of" documents supporting the prepay transaction; and directing California Community Choice Financing Authority (CCCFA) to make payments to service providers for issuance costs from prepay bond proceeds.

16. Approve Amended and Restated Energy Storage Service Agreement with Yellow Pine Solar III, LLC

Recommendation: Approve the proposed Amended and Restated Renewable Energy Storage Service Agreement with Yellow Pine Solar III, LLC to move the capacity between project sites, reduce the fixed capacity price, and make additional minor amendments, and authorize the Chief Executive Officer to execute the agreement.

17. Approve Energy Storage Service Agreement for the North Johnson Energy Center

Recommendation: Approve the proposed 15-year Energy Storage Service Agreement with North Johnson Energy Center, LLC for a 50 MW/200 MWh, 4-hour battery energy storage facility and authorize the Chief Executive Officer to execute the agreement.

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.

<u>ADJOURNMENT</u>

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, August 28, 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

available Copies of the agenda and agenda packet are at https://sdcommunitypower.org/resources/meeting-notes/. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, agenda-related documents, requested including can be electronically 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

May 22, 2025

WELCOME

CALL TO ORDER

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

ROLL CALL

PRESENT: Chair Aguirre, City of Imperial Beach; Director Elo-Rivera, City of San

Diego (arrived at 5:02 p.m.); Director Inzunza, City of Chula Vista; Director San Antonio, City of Encinitas; Director Suzuki, City of La Mesa;

and Director Yamane, City of National City

ABSENT: Vice Chair Lawson-Remer, County of San Diego

Staff Present: Chief Executive Officer Burns; General Counsel Tyagi; Director of

Finance Manglicmot; Finance Manager Alfaro; Senior Financial Analyst Do; Financial Analysts Mercedes and Bateman; Director of Power Contracts Key; Director of Origination Torres; 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 employee Krystal Carranza, Procurement Analyst, to introduce herself.

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - MAY 22, 2025

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 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

There were no public comments on Consent Item Nos. 1-9.

Motioned by Director Inzunza and seconded by Director Yamane to approve Consent Calendar Item Nos. 1 through 9. The motion carried 6/0 as follows:

AYES: Chair Aquirre, Directors Elo-Rivera, Inzunza, San Antonio, Suzuki,

and Yamane

NOES: None ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer

REGULAR AGENDA

10. Community Advisory Committee Report

Community Advisory Committee (CAC) Chair Vasilakis provided a quarterly report on CAC's activities.

There were no public comments on Item No. 10.

Board members expressed appreciation to Mr. Vasilakis for his continued work and efforts on the CAC.

After Board member discussion and comments, the CAC quarterly report was received and filed.

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

Mr. Manglicmot presented an overview of the draft FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan.

Jake Marshall, Operations Manager at Greentech Renewables San Diego, provided a public comment.

After Board member questions, discussion and comments, the draft FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY 2026-2030 Capital Investment Plan was received and filed.

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

Mr. Key presented the proposed Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC.

There were no public comments on Item No. 12.

After Board member questions, discussion and comments, motioned by Chair Aguirre and seconded by Director Yamane to 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. The motioned carried 6/0 as follows:

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

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - MAY 22, 2025

NOES: None ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer

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

Mr. Key presented the proposed Amended and Restated Power Purchase Agreement with Noble Solar, LLC.

There were no public comments on Item No. 13.

After Board member questions, discussion and comments, motioned by Director Yamane and seconded by Director Suzuki to 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. The motioned carried 6/0 as follows:

AYES: Chair Aguirre, Directors Elo-Rivera, Inzunza, San Antonio, Suzuki,

and Yamane

NOES: None ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer

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

Ms. Torres presented the proposed EEI Master Agreement, Confirmation and Collateral Annex with Clean Power Alliance of Southern California.

There were no public comments on No. 14.

After Board member questions, discussion and comments, motioned by Chair Aguirre and seconded by Director Inzunza to 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. The motioned carried 6/0 as follows:

AYES: Chair Aquirre, Directors Elo-Rivera, Inzunza, San Antonio, Suzuki,

and Yamane

NOES: None

MEETING MINUTES - BOARD OF DIRECTORS - COMMUNITY POWER - MAY 22, 2025

ABSTAINED: None

ABSENT: Vice Chair Lawson-Remer

CHIEF EXECUTIVE OFFICER REPORT

Ms. Burns reported on Community Power's recent activities and events.

DIRECTOR COMMENTS

There were no Director comments.

CLOSED SESSION:

There were no public comments on Closed Session Item Nos. 1 and 2.

The Board recessed into Closed Session at 6:29 p.m. to hear item Nos. 1 and 2.

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

The Board reconvened in Open Session with a quorum present at 7:49 p.m.

PRESENT: Chair Aguirre, City of Imperial Beach; Director Elo-Rivera, City of San

Diego; Director Inzunza, City of Chula Vista; Director San Antonio, City of Encinitas; Director Suzuki, City of La Mesa; and Director Yamane,

City of National City

ABSENT: Vice Chair Lawson-Remer, County of San Diego

Staff Present: General Counsel Tyagi; BBK Counsel de Sousa; Clerk of the Board

Hernandez; and Assistant Clerk of the Board Vences

REPORT ON CLOSED SESSION:

Legal Counsel de Sousa reported that the Closed Session commenced at 7:35 p.m. and there were no reportable actions.

ADJOURNMENT

Community Power Board meeting adjourned at 7:49 p.m. to the next regular meeting scheduled for Thursday, June 26, 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: Eric W. Washington, Chief Financial Officer/Treasurer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Treasurer's Report for Period Ending April 30, 2025

DATE: June 26, 2025

RECOMMENDATION:

Receive and File Treasurer's Report for Period Ending April 30, 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 ten-month period ended April 30, 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

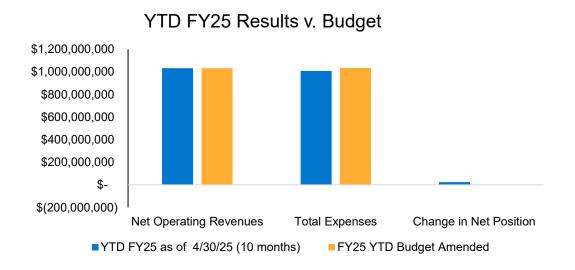
Actual financial results for the period ended April 30, 2025: \$1,033.0 million in net operating revenues were reported compared to \$1,033.6 million budgeted for the period. \$1,009.4 million in total expenses were reported (including \$968.7 million in energy costs) compared to \$1,034.1 million budgeted for the period (including \$972.5 million budgeted for energy costs). After expenses, Community Power's change in net position of \$23.6 million was reported year-to-date for FY 2024-25. The following is a summary of the actual results compared to the amended FY 2024-25 Operating Budget.

Table 1: Budget Comparison Versus Actual Result

	Budget C	om	parison			
	TD FY25 as of /25 (10 months)	FY	25 YTD Budget Amended	Bu	dget Variance (\$)	Budget (%)
Net Operating Revenues	\$ 1,032,972,314	\$	1,033,560,599	\$	(588,285)	99.9%
Total Expenses	\$ 1,009,359,387	\$	1,034,085,870	\$	(24,726,483)	98%
Change in Net Position	\$ 23,612,927	\$	(525,271)	\$	24,138,198	

- Net operating revenues finished \$0.6 million (or 0.1 percentage points) under the budget and was largely in line with expectations. Customers also received the California Climate Credit in April 2025 which partially offset customer arrearages.
- Operating expenses finished \$24.7 million (or 2.0 percentage points) under the budget due to the sale of certain renewable resources, a reclassification of CAISO settlement fees from January 2025, and unhedged energy at higher prices than budgeted.

Figure 1: Budget Comparison versus Actual Results



For the ten-month period ending April 30, 2025, Community Power contributed \$23,612,928 to its net position compared to the expected deficit of (\$525,271) per the FY 2024-25 Operating Budget. Total Community Power reserves at the end of the period were \$322,766,955 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$535,266,955. Community Power has a total FY 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 April 31, 2025, the market value of the portfolio was \$61.5 million compared to the \$61.4 million market value as of March 31, 2025. The rise in market value is reflective of accrued interest during the month. The following is a snapshot of overall characteristics of the portfolio.

Portfolio Characteristics	
Average Modified Duration	2.64
Average Coupon	4.15%
Average Purchase YTM	4.34%
Average Market YTM	3.97%
Average Credit Quality*	AA+
Average Final Maturity	3.15
Average Life	2.73

Account Summary

	End Values as of 03/31/2025	End Values as of 04/30/2025
Market Value	60,993,504.06	61,501,152.78
Accrued Interest	421,571.65	483,995.85
Total Market Value	61,415,075.71	61,985,148.63
Income Earned	195,714.34	217,721.59
Cont/WD	10,000,000.00	0.00
Par	61,178,447.16	61,300,443.50
Book Value	60,702,336.32	60,854,151.24
Cost Value	60,662,964.62	60,808,881.93

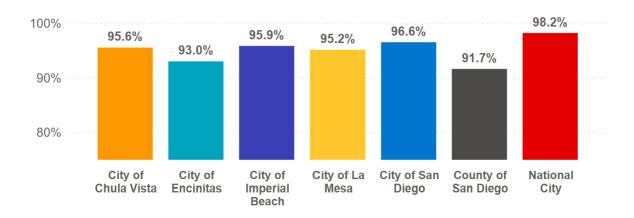
Contract Execution between \$50,000 and \$125,000

There were no contracts in May that were executed between \$50,000 and \$125,000.

Metrics

Figure 2: Participation Rates as of 6/1/2025

Participation by Jurisdiction



Jurisdiction	Service	Eligible	Enrolled	Participation
	Option Default	Accounts	Accounts	Rate
City of Chula Vista	PowerOn	98,708	94,339	95.6%
City of Encinitas	Power100	28,861	26,855	93.0%
City of Imperial Beach	PowerOn	10,839	10,392	95.9%
City of La Mesa	PowerOn	29,516	28,087	95.2%
City of San Diego	PowerOn	625,553	603,998	96.6%
County of San Diego	PowerOn	190,613	174,719	91.7%
National City	PowerOn	19,455	19,114	98.2%
Total		1,003,545	957,504	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 June 1, 2025. The \$2 million decline in arrearages was attributed to the receipt of the California Climate Credit in April 2025 which partially offset customer arrearages.

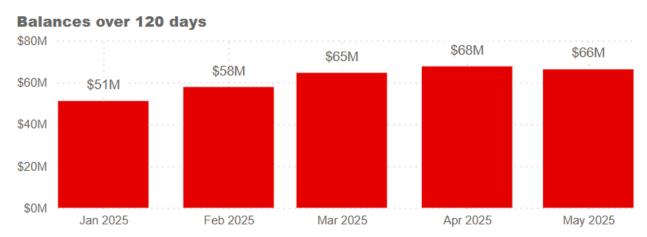


Figure 3: State of Community Power Arrearages as of 6/1/2025

Figure 4: State of Community Power Arrearages Residential vs Commercial as of 6/1/2025





FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

This item was presented at the Finance and Risk Management Committee on June 12, 2025. The Committee received and filed the report.

ATTACHMENTS:

A: 2025 Year-to-Date Period Ended April 30, 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 April 30, 2025, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the ten 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

San Rafael, CA June 4, 2025

SAN DIEGO COMMUNITY POWER STATEMENT OF NET POSITION As of April 30, 2025

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 322,766,955
Cash and cash equivalents - restricted	14,105,819
Accounts receivable, net of allowance	85,306,096
Accrued revenue	41,175,142
Prepaid expenses	7,207,103
Other receivables	10,284,546
Deposits	10,167,029
Investments	2,808,767
Total current assets	493,821,457
Noncurrent assets	
Cash and cash equivalents - restricted	647,000
Investments	57,969,963
Capital assets, net of depreciation and amortization	1,509,937
Total noncurrent assets	60,126,900
Total assets	553,948,357
LIABILITIES	
Current liabilities	
Accrued cost of electricity	117,999,609
Accounts payable	3,524,236
Other accrued liabilities	1,975,488
State surcharges payable	175,048
Deposits - energy suppliers	3,263,000
Lease liability	804,984
Advances from grantors	13,605,819
Total current liabilities	141,348,184
Noncurrent liabilities	
Lease liability	746,779
Deposits - energy suppliers	4,410,450
Total noncurrent liabilities	5,157,229
Total liabilities	146,505,413
NET POSITION	
Restricted for security collateral	14,752,819
Unrestricted	392,690,125
Total net position	\$ 407,442,944

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

Ten Months Ended April 30, 2025

OPERATING REVENUES	
Electricity sales, net	\$ 1,031,704,056
Grant revenue	1,277,998
Other income	1,268,258
Total operating revenues	1,034,250,312
OPERATING EXPENSES	
Cost of electricity	968,694,635
Contract services	16,239,471
Staff compensation	13,833,929
Other operating expenses	13,619,317
Depreciation and amortization	533,960
Total operating expenses	1,012,921,312
Operating income	21,329,000
NON-OPERATING REVENUES (EXPENSES)	
Investment income	11,164,558
Interest expense	(432,996)
Nonoperating revenues (expenses), net	10,731,562
CHANGE IN NET POSITION	32,060,562
Net position at beginning of year	375,382,382
Net position at end of year	\$ 407,442,944

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS Ten Months Ended April 30, 2025

CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$ 1	1,087,655,899
Receipts from grantors		14,883,817
Receipts of supplier security deposits		15,187,455
Other operating receipts		1,246,064
Payments to suppliers for electricity		(983,518,699)
Payments for other goods and services		(30,326,203)
Payments for deposits and collateral		(1,974,371)
Payments for staff compensation		(13,839,179)
Payments of state surcharges		(2,411,387)
Net cash provided by operating activities		86,903,396
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		(540,492)
Net cash used by capital and related financing activities		(540,492)
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income received		9,818,815
Proceeds from investment sales and maturities of investments		642,757
Purchase of investments		(60,352,851)
Net cash provided (used) by investing activities		(49,891,279)
Net change in cash and cash equivalents		36,077,664
Cash and cash equivalents at beginning of year		301,442,110
Cash and cash equivalents at end of year	\$	337,519,774
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	\$	322,766,955
Restricted cash - current	,	14,105,819
Restricted cash - noncurrent		647,000
Cash and cash equivalents	\$	337,519,774
NONCASH INVESTING ACTIVITIES		
Unrealized appreciation and timing differences in investment income	\$	1,345,743
	4	
NONGACH CARREAL AND DELLATED	Ψ	
NONCASH CAPITAL AND RELATED	Ψ	
NONCASH CAPITAL AND RELATED FINANCING ACTIVITIES Acquisition of lease asset	\$	1,284,053

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS (continued) Ten Months Ended April 30, 2025

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

Operating income	\$ 21,329,000
Adjustments to reconcile operating income to net	
cash provided by operating activities	
Depreciation and amortization expense	533,960
(Increase) decrease in:	
Accounts receivable, net	18,206,069
Accrued revenue	35,688,281
Prepaid expenses	27,811,297
Other receivables	(4,118,581)
Deposits	1,995,170
Increase (decrease) in:	
Accrued cost of electricity	(30,116,707)
Accounts payable	(1,483,641)
Advances from grantors	13,605,819
Other accrued liabilities	812,173
State surcharges payable	(353,894)
Deposits - energy suppliers	2,994,450
Net cash provided by operating activities	\$ 86,903,396



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 ten months ended April 30, 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 June 4, 2025

SAN DIEGO COMMUNITY POWER OPERATING FUND BUDGETARY COMPARISON SCHEDULE Ten Months Ended April 30, 2025

Year-to-Date Annual Amended Actual/ Amended Amended **Budget Variance** Amended Amended **Budget Budget** Actual (Under) Over **Budget % Budget** Remaining REVENUES AND OTHER SOURCES 1.051,970,075 100% 192,930,399 Gross Ratepayer Revenues \$ 1,050,080,464 (1,889,611)1,243,010,863 (21,752,690)Less: Uncollectible Customer Accounts (18,409,476)(18,376,408)33,068 100% (3,376,282)Other Income 1,268,258 (1,268,258)1,268,258 na 1,033,560,599 1,221,258,173 Total Revenues and Other Sources 1,032,972,314 (588,285)188,285,859 OPERATING EXPENSES Cost of Energy 972,511,996 968,694,635 (3,817,361)100% 1,116,836,549 148,141,914 **Professional Services and Consultants** 20,288,630 15,323,700 (4,964,930)76% 24,346,342 9,022,642 Personnel Costs 12,965,257 84% 18,567,895 5,602,639 15,473,240 (2,507,984)Marketing and Outreach 1,481,621 2,482,173 1,496,972 (985,201)60% 2,978,593 58% General & Administrative 4,091,468 2,360,508 (1,730,960)4,909,761 2,549,253 **Total Operating Expenses** 1,014,847,507 1,000,841,071 (14,006,436) 1,167,639,140 166,798,070 Operating Income (Loss) 18,713,092 32,131,243 13,418,151 53,619,033 21,487,790 NON-OPERATING REVENUES (EXPENSES) Investment Income 11,164,558 11,164,558 (11,164,558)na Interest and Related Expenses (1,063,333)(1,507,844)142% (1,276,000)231,844 (444,511)Transfer to Capital Investment Program 100% (18,175,030)(18,175,030)(18,175,030)Total Non-Operating Revenues (Expenses) (19,238,363)(8,518,316)10,720,047 (19,451,030)(10,932,714)NET CHANGE 23,612,928 (525,271)24,138,199 34,168,003 10,555,075



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

TO: Board of Directors

FROM: Colin Santulli, Senior Director of Programs

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Update on Programs

DATE: June 26, 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:</u> The Commercial Application Assistance Pilot has now concluded, and a final pilot summary report was compiled by TRC for staff. Through the pilot, 20 key accounts were engaged, with over three million kWh per year of potential savings identified. The pilot identified over \$12M in program funding for customers although it was not possible to ascertain how much was actually received due to application timelines and awards not aligning with the Pilot timelines.

<u>Next Steps</u>: Program staff is working with the Accounts Team to assess the need for a continued program offering and evaluate changes to the pilot structure to scale into a full program.

Efficient Refrigeration Pilot Project

<u>Status</u>: Staff began outreach for the <u>Efficient Refrigeration Pilot</u> in March 2025. Eligible corner stores, small businesses, and nonprofits in low-income and low-food-access areas within Community Power's service territory can receive up to two energy-efficient refrigerators and/or freezers and an American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE") Level 1 energy audit at no cost to the participant. The pilot aims to serve a total of 24 participants. To date, Staff have been conducting targeted outreach for the pilot primarily by engaging member agency staff, elected officials, and community organizations. As of June 6, 2025, 14 participants have been enrolled in the pilot.

<u>Next Steps</u>: Staff will continue to conduct outreach and enroll participants in the pilot until grant funds are expended.

Residential Programs

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

<u>Status</u>: At the April 2024 Board of Directors meeting, the Board adopted Resolution No. 025-03 that authorized Staff to execute a Memorandum of Understanding ("MOU") between Community Power and Los Angeles County ("LA County"), the Program Administrator for the EBD DI Program. The MOU was fully executed at the end of May 2025 by LA County.

At the April 2025 Board meeting, the Board requested clarification on tenant protections and displacement-related requirements. The program guidelines require that Program Administrators (i.e., LA County) design projects to avoid displacement. LA County has clarified that, due to budget constraints, projects where resident displacement is unavoidable will not be prioritized. The EBD DI program lacks dedicated funding to cover displacement-related costs. Before any project begins, residents and property owners will be presented with an assessment and plan that describes the benefits of specific measures and any potential impacts from the work, including potential displacement, so they can adjust measures and make an informed decision about continuing with participation.

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 DI program, anticipated summer 2025.

Flexible Load Programs

Smart Home Flex Pilot Project

Staff continue to work with Virtual Peaker to prepare to initiate Smart Flex Events this summer. Staff are creating a strategy for calling events that best utilize the smart thermostats to bring value to Community Power and pilot participants. Staff anticipate most events to be called in the late summer months of August and September since that is when Community Power typically sees the highest prices for energy and resource adequacy.

Staff are planning to add heat pump water heaters to the Smart Home Flex pilot later this calendar year. Staff are targeting water heaters incentivized through the TECH Clean CA program, which are equipped with thermostatic mixing valves allowing Community Power to safely heat water up to 140 degrees. This will avoid heating water during Smart Home Flex events while ensuring customers continue to receive hot water when they need it.

<u>Next Steps</u>: Staff are continuing to work with Virtual Peaker and the Power Services team to prepare for the Smart Flex Events this summer and add electric heat pump water heaters with built-in smart capabilities.

EV Flex Connect Pilot Project

<u>Status</u>: Staff launched EV Flex Connect in February 2025 and continue to work with its implementation partner to increase participant enrollment. On May 15, 2025, Staff was notified that it received an award for its proposal to California Energy Commission ("CEC") Grant Funding Opportunity 24-302 — Enabling Electric Vehicles as Distributed Energy Resources. The awarded project will use data from EV Flex Connect together with distribution data from SDG&E to analyze and quantify the value of V1G strategies. Staff will work with external partners, including SDG&E, Optiwatt, and the U.S. Department of Energy's Pacific Northwest National Laboratory, to execute this project.

<u>Next Steps</u>: Staff will continue to work with its implementation partner on increasing participant enrollment and begin planning activities for the awarded CEC grant.

Solar and Energy Storage Programs

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

<u>Status:</u> GRID Alternatives ("GRID") has been working to process DAC-SASH applications and complete roof repair work by the pilot deadline. While GRID has identified potential projects, projects have dropped out due to building code issues that are too difficult or expensive to correct, electrical usage too low to meet DAC-SASH minimum system requirements, and/or lack of responsiveness/loss of contact. This has led Staff to extend pilot deadline to June 30, 2025, to ensure that as many homes as possible receive the benefits of the pilot and DAC-SASH program.

<u>Next Steps</u>: Once the pilot is complete, GRID will work on a final pilot report identifying successes, challenges, and opportunities. Staff anticipate bringing a full update on the pilot to the Board this summer 2025.

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 staff report for the most recent update on this program.

Solar Battery Savings ("SBS") Program

<u>Status</u>: Staff continue to work on the development of the Residential Solar Battery Savings (SBS) Program. Building on the success of the SBS Pilot launched in 2024, staff are making improvements to the program design with a goal of launching the SBS Program in late Q3 2025. Staff held two informational sessions with solar and storage contractors in late May to receive feedback on program design changes under consideration. Over 30 contractors attend the in-person and virtual feedback sessions.

<u>Next Steps</u>: Staff continue to finalize program documentation and other pre-launch activities (e.g., improving the program's web-based contractor portal to improve program efficiency, developing marketing collateral to provide consistent program messaging to contractors and participants.)

Solar Advantage Program

<u>Status</u>: Please refer to <u>Item 3</u> of the May 2025 Board staff report for the most recent update on this program.

<u>Next Steps</u>: Staff anticipates filing an additional extension request due to continued negotiations for one of the bids received from the first Request for Offer ("RFO"). Staff anticipates bringing this PPA to the Board of Directors meeting for review and approval in Q3 2025.

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, questions were due on May 15, 2025, and responses to questions were posted on Community Power's solicitation webpage on May 22, 2025.

<u>Next Steps</u>: Staff will finalize contract negotiations with vendors selected from the Phase 1 solicitation. Staff anticipate contracts to be signed by the end of July 2025 in accordance with Resolution No. 2025-01 adopted by the Board on January 23, 2025, authorizing the

Chief Executive Officer to 'negotiate and execute contracts with third parties to implement the agreement or use of [SDREN] funds.' Contracts are expected to be executed with selected vendors with amounts not exceeding the budgets stated in the solicitations, which are \$800,000 for administrative, regulatory, and reporting support; \$5,556,916 for the Codes and Standards Program; \$5,556,916 for the Energy Pathways Program; and \$9,030,024 for the Workforce Training and Capacity Building Program. SDREN funds are authorized by the California Public Utilities Commission and are disbursed to San Diego Community Power in accordance with the San Diego Regional Energy Network Energy Efficiency Programs and Budget Agreement for Years 2024-2027 executed between Community Power and SDG&E (under Resolution No. 2025-01).

Additionally, the Phase 3 solicitation is planned to close on June 26, 2025. Staff anticipate awarding contracts for Phase 2 solicitations in Q3 CY 2025, and the Phase 3 solicitation in Q4 CY 2025.

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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: June 26, 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 thirteen people strong. The Power Services team has one open position currently for a Chief Commercial Officer, and is excited to continue stable, prudent growth through 2025.

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 have over two dozen long-term contracts executed for energy, renewable energy credits and/or capacity from renewable and storage projects.

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 second 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. 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 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 remained steady due to relatively mild weather and high renewable power supply. Summer forecasts indicate higher chances of above normal temperatures throughout the West, with slightly lower chances in coastal locations. No supply shortfalls are expected, but markets remain sensitive to extreme weather events and unexpected supply shortages.

ATTACHMENTS:
N/A
FISCAL IMPACT:
weather events and unexpected supply shortages.

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: June 26, 2025

RECOMMENDATION:

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

BACKGROUND:

Staff will provide regular updates to the Board of Directors centered around tracking customer opt actions (i.e., opt outs, opt ups, opt downs, and re-enrollments) 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 May 19, 2025, Community Power is serving a cumulative total count of **957,504** active accounts.

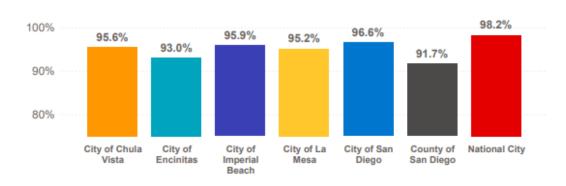
Customers with newly established accounts or who have moved into a new service address within any and all of our member jurisdictions receive 2 post-enrollment notices through the mail at their mailing address on file within 60 days of their account start date to notify them that they have defaulted to Community Power electric generation service.

B) Customer Participation Tracking

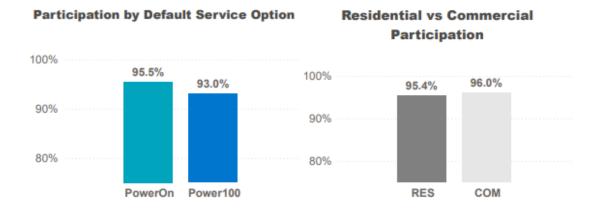
The below charts summarize customer elections into San Diego Community Power's four (4) available service levels:

Enrolled	Participation	
Accounts	Rate	Participation
957 504	95.4%	•

Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,708	94,339	95.6%
City of Encinitas	Power100	28,861	26,855	93.0%
City of Imperial Beach	PowerOn	10,839	10,392	95.9%
City of La Mesa	PowerOn	29,516	28,087	95.2%
City of San Diego	PowerOn	625,553	603,998	96.6%
County of San Diego	PowerOn	190,613	174,719	91.7%
National City	PowerOn	19,455	19,114	98.2%
Total		1,003,545	957,504	95.4%

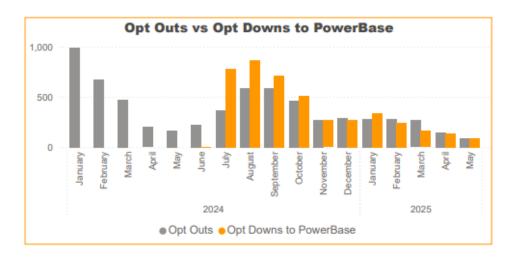


Service Option

PowerBase	PowerOn	Power100	Power100 Green+		
Enrolled 3,968 Participation 0.4%	Enrolled 919,265 Participation 96.0%	Enrolled 34,270 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	94,339	375	0.4%	93,052	98.6%	912	1.0%		
City of Encinitas	Power100	26,855	153	0.6%	414	1.5%	26,288	97.9%		
City of Imperial Beach	PowerOn	10,392	32	0.3%	10,284	99.0%	76	0.7%		
City of La Mesa	PowerOn	28,087	118	0.4%	27,704	98.6%	265	0.9%		
City of San Diego	PowerOn	603,998	2,081	0.3%	596,013	98.7%	5,903	1.0%	1	0.0%
County of San Diego	PowerOn	174,719	1,167	0.7%	172,758	98.9%	794	0.5%		
National City	PowerOn	19,114	42	0.2%	19,040	99.6%	32	0.2%		
Total		957,504	3,968	0.4%	919,265	96.0%	34,270	3.6%	1	0.0%



Opt Up History

Total Opt Ups Opt Ups Current* 9,443 8,050



Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
City of Chula Vista	710	175	61	49	5	4	3	1,007
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		1	309
City of National City			12	24				36
City of San Diego	3,316	2,895	488	340	43	15	14	7,111
County of San Diego	4		207	627	10	1	2	851
Total	4,263	3,220	799	1,061	60	20	20	9,443

Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Commercial	4,256	296	232	701	15	14	12	5,526
Residential	7	2,924	567	360	45	6	8	3,917
Total	4,263	3,220	799	1,061	60	20	20	9,443

Opt Ups by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
CSR	4,232	1,372	301	817	25	17	15	6,779
IVR	4	85	84	42	4	1	1	221
Web	27	1,763	414	202	31	2	4	2,443
Total	4,263	3,220	799	1,061	60	20	20	9,443

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

Opt Down History





Opt Downs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
City of Chula Vista		2	4	287	108	9	6	416
City of Encinitas	35	429	74	150	28	10	6	732
City of Imperial Beach		1		31	4	1	2	39
City of La Mesa		4		106	16	5	2	133
City of National City				36	11	2		49
City of San Diego		28	13	1,793	401	76	50	2,361
County of San Diego			6	1,052	173	38	27	1,296
Total	35	464	97	3,455	741	141	93	5,026

Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Commercial	34	23	9	508	47	9	7	637
Residential	1	441	88	2,947	694	132	86	4,389
Total	35	464	97	3,455	741	141	93	5,026

Opt Downs by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
CSR	31	311	65	2,562	498	86	46	3,599
IVR	4	26	3	309	82	22	13	459
Web		127	29	584	161	33	34	968
Total	35	464	97	3,455	741	141	93	5,026

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

Opt Out History



Opt Outs Quarterly

Opt Outs Monthly



Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
City of Chula Vista	267	3,466	747	411	72	9	10	4,982
City of Encinitas	66	1,870	230	118	26	2	1	2,313
City of Imperial Beach	32	343	99	60	5	2		541
City of La Mesa	84	1,269	235	128	26	2	2	1,746
City of National City			285	75	20	2		382
City of San Diego	1,078	19,186	3,185	1,837	346	71	39	25,742
County of San Diego	2	1	13,902	2,669	336	62	37	17,009
Total	1,529	26,135	18,683	5,298	831	150	89	52,715

Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Commercial	1,492	535	1,686	345	53	9	6	4,126
Residential	37	25,600	16,997	4,953	778	141	83	48,589
Total	1,529	26,135	18,683	5,298	831	150	89	52,715

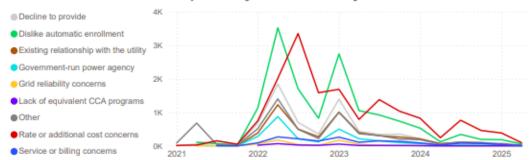
Opt Outs by Method

Opt Method	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
CSR	1,104	6,963	4,706	1,653	274	36	35	14,771
IVR	102	4,886	3,789	1,284	140	29	23	10,253
Web	323	14,286	10,188	2,361	417	85	31	27,691
Total	1,529	26,135	18,683	5,298	831	150	89	52,715

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

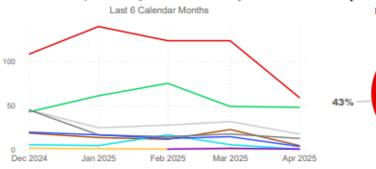
Opt Out Reason Summary

Opt Outs by Reason Quarterly



Opt Outs by Reason Monthly

Opt Out Reason Distribution



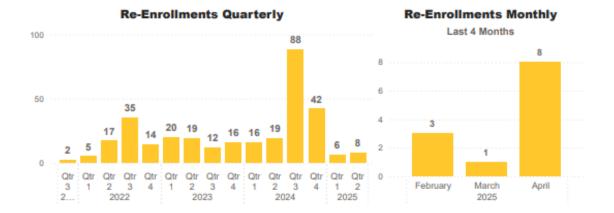


Opt Outs by Reason Table

Opt Out Reason	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Decline to provide	228	3,583	2,519	465	85	18	13	6,911
Dislike automatic enrollment	203	7,187	5,458	1,188	185	48	12	14,281
Existing relationship with the utility	2	2,389	1,968	462	49	5	8	4,883
Government-run power agency	24	1,491	961	129	28	1	3	2,637
Grid reliability concerns	7	293	252	20	1	1		574
Lack of equivalent CCA programs		131	90	12	3	1	1	238
Other	819	2,636	1,884	453	50	13	9	5,864
Rate or additional cost concerns	240	7,707	4,897	2,297	385	59	36	15,621
Service or billing concerns	6	718	654	272	45	4	7	1,706
Total	1,529	26,135	18,683	5,298	831	150	89	52,715

Re-Enrollment Requests

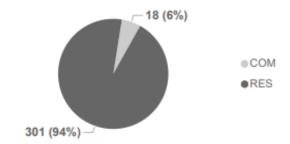
Excludes closed accounts



Re-Enrollments by Jurisdiction

Jurisdiction	Accounts
City of Chula Vista	24
City of Encinitas	29
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	319

Re-Enrollments Residential vs Commercial



D) Contact Center Metrics

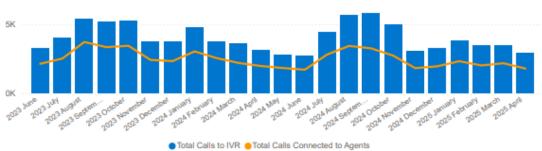
As anticipated, call volumes have continued to decrease as a result of the temperate weather and lower winter electricity rates.

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

Contact Center Metrics

Contact Center Call Volume Trends

Last 24 Calendar Months

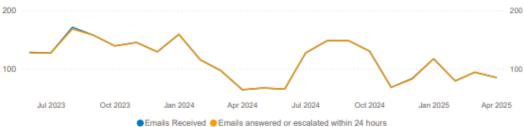


Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Total Calls to IVR	2,289	47,118	52,977	48,073	10,767	2,904	848	164,976
Total Calls Connected to Agents	1,401	30,174	34,173	29,332	6,528	1,793	144	103,545
Avg Seconds to Answer	20.00	11.50	6.75	18.08	15.00	5.00	4.00	13.40
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.6	8.7	7.4	7.4	9.3
Calls Answered within 60	96.23%	95.50%	97.57%	91.74%	92.01%	98.94%	99.31%	95.16%
Seconds (75% SLA)								
Abandon Rate	0.57%	0.36%	0.19%	0.72%	0.88%	0.17%	0.00%	0.46%

Customer Service Email Volume Trends

Last 24 Calendar Months



Customer Service Emails

	2021	2022	2023	2024	2025 Q1	2025-4	2025-5	Total
Emails Received	272	2,894	2,116	1,271	290	85	8	6,936
Emails answered or escalated within 24 hours	257	2,821	2,107	1,270	290	85	8	6,838
Completion %	94%	96%	100%	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 9 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: 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: June 26, 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	IMPAC	Γ:
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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: Community Advisory Committee Monthly Report

DATE: June 26, 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 on the regular agenda and monthly reports on the consent agenda. The next quarterly update is expected to take place at the September 25, 2025 Board meeting.

ANALYSIS AND DISCUSSION:

During the June 12, 2025, regular CAC meeting:

- Vice-Chair Emerson (City of National City) 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 held elections for its Fiscal Year 2025-2026 Officers. The results were as follows:
 - Chair: David Harris (La Mesa)

- Vice-Chair: Luis Montero-Adams (City of San Diego)
- Secretary: Ross Pike (Unincorporated San Diego County)
- Members received a joint presentation from the Regulatory and Legislative Affairs and Power Services teams on Tariffs, Tax Credits and Executive Orders: New-Build Market Outlook. Members relayed concern around the uncertainty regarding federal tax credits and tariffs and encouraged staff to advocate for alternate ways to incentivize developers, such as expediting permitting processes.
- The CAC also discussed the Draft Fiscal Year 2025-2026 Operating and Capital Budgets, as well as the Fiscal Year 2026-2030 Capital Improvement Plan. Members asked questions on reserve target timelines, the qualifications of the consultant providing Community Power's enterprise-wide data platform, the Solar Battery Savings program and its implementation, as well as earned media opportunities.
- The Vice-Chair shared as an announcement the departure of Member Jahns from the CAC, who is ending his last term, and will be formally recognized at the Board of Directors at their next regular meeting. The CAC will observe a July meeting recess. No Board of Directors items were recommended.

As of June 12, 2025, the CAC has one vacancy representing the City of Chula Vista, with an appointment for the Board of Directors' consideration expected to be heard during the June 26, 2025 regular meeting. Come July 2025, the CAC also has an expected vacancy for the City of Encinitas.

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.

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: June 26, 2025

RECOMMENDATION:

Receive and file the update on regulatory and legislative affairs.

BACKGROUND:

Staff provides regular updates to the Board of Directors regarding Community Power's regulatory and legislative engagement. Please see Item No. 11 for the update on federal policy matters.

ANALYSIS AND DISCUSSION:

A) Regulatory Updates

Power Charge Indifference Adjustment

On May 23, 2025, the California Public Utilities Commission (CPUC) issued a Proposed Decision in Track 1 of the Power Charge Indifference Adjustment (PCIA) proceeding. The Track 1 Proposed Decision adopts several methodological changes to the Resource Adequacy (RA) Market Price Benchmark (MPB), which is part of the calculation for determining the market value of the investor-owned utility's (IOU) – such as San Diego Gas and Electric (SDG&E) – portfolio of resources that it procured on behalf of customers who departed to another provider, such as Community Power. Specifically, the Proposed Decision addresses five proposals from CPUC Energy Division staff, as outlined in a staff-proposal released in February 2025. Community Power's trade association, the California Community Choice Association (CalCCA), took positions on each of the staff proposals in previous comments and briefs; for additional background, see the April 2025 regulatory update to the Board of Directors on page 49 and the May 2025 regulatory update to the Board of Directors on page 46. The table below outlines the five CPUC staff proposals,

CalCCA's position on each proposal, and what the CPUC is ultimately proposing to adopt in the Proposed Decision.

CPUC Staff Proposal	CalCCA Position	CPUC Proposed Decision
Include all transactions available for given delivery year for all system, flex, and local RA forecast and final adders	Reject: Inclusion in the RA MPB of all transactions deliverable, rather than transacted, in a year does not reflect current market value as required by the RA MPB Framework	Adopts Modified: RA MPB based upon three-years' transaction data for the forecast calculation and four-years' transaction data for the final calculation
Exclude affiliate transactions from the calculation of the MPB	Support: Risk of price manipulation and distorting the accuracy of the RA MPB	Adopts
Exclude swap and sleeve transactions from the MPB	Support: To the extent the CPUC can identify such transactions in an objective and transparent manner	Adopts Modified: Swap transactions shall be excluded and utilize a single transaction within a sleeve transaction
Consider using monthly values for the MPBs	Support: More accurately reflects seasonal prices	Deferred: Beyond the scope of Track 1
Consider using one value for all MPBs, including system, local and flexible	Support: Maximizes the overall transaction sample size	Adopts

The Proposed Decision proposes to apply the changes outlined above to the calculation of the 2025 Final and 2026 Forecast RA MPB. Opening comments on the Proposed Decision are due June 12, 2025, reply comments are due June 17, 2025, and the earliest the CPUC can vote on a Final Decision is June 26, 2025.

Community Choice Aggregator (CCA) Customer Access to Self-Generation Incentive Program (SGIP) Funding

Community Power submitted a formal letter to the CPUC urging immediate action to resolve inequities preventing low-income CCA customers from accessing Self-Generation Incentive Program (SGIP) Residential Storage and Solar Equity (RSSE) funds. Community Power, in coordination with CCAs across the state, have engaged with the CPUC in good faith to resolve this issue for over a year with no resolution, meanwhile the RSSE program funding was released on June 2, while current program rules provide no practical pathway for CCA customers to be eligible for funding. The SGIP program requires enrollment in a "Qualified Demand Response" program, but none currently exists for CCA customers. Currently, the only approved "Qualified Demand Response" (DR) program in San Diego is limited to bundled customers, leaving 70% of the region's residents, including SDCP customer, unable to participate unless they opt out of CCA service and face higher costs. SDCP has a pending advice letter seeking approval of its

Solar Battery Savings program, which meets the stated goals of the SGIP program and would provide immediate access to SGIP incentives.

Integrated Resource Planning

On April 29, 2025, the CPUC issued a Ruling requesting comment on the Reliable and Clean Power Procurement Program (RCPPP) 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 procurement quantities of attributes each LSE metrics that allow resource attributes, should be required for monitoring of obligations. compliance with such as effective to provide, capacity, firm considering factors procurement such as load obligations. energy, and/or clean energy attributes, migration and each over a specified LSE's existing period. portfolio of owned and/or contracted resources.

Commission staff held a workshop to present the Staff Proposal and answer parties' questions on May 16. The CPUC granted a request to extend the comment deadline, which is now July 15, and reply comments are due August 5, 2025.

Resource Adequacy

On May 22, 2025, the CPUC issued a <u>Proposed Decision</u> in the Resource Adequacy (RA) proceeding adopting Local Capacity Requirements for 2026-2028, Flexible Capacity Requirements for 2026, refinements to the RA program, and closing the proceeding. The Proposed Decision establishes RA needs as well as addresses the proposals submitted by more than 20 parties in March 2025, including:

 Adopts Local Capacity Requirements for the San Diego/Imperial Valley Region to be 2,631 MW in 2026, 2,800 MW in 2027, and 2,968 MW in 2028.

- Adopts an 18 percent planning reserve margin (PRM), with an extension of the effective PRM target of 1,260-2,300 MW for June-October (translates to 3-5.5%), for 2026 and 2027.
- Does not adopt hourly load transactions, as <u>proposed by CalCCA</u>, instead authorizes Energy Division to prepare a report on whether transactability issues exist in 2nd Quarter (Q2) 2026.
- Finds CalCCA's proposal to count co-located energy-only resources as RA resources is not adequately developed.
- Adopts proposal that if an LSE that cures its deficiency with a new resource coming online before the T-1 deadline, the LSE will not be assessed penalties.
- Agrees it is reasonable to extend the off-peak import counting rule, as the rule may help with affordability issues with off-peak imports that are lower cost than a 24 x 7 product.
- Modifies the load migration update process as follows: an LSE is permitted one load migration update in mid-February to cover June to December load migration. Other than the one load migration update, an LSE's load forecast is locked in for the January-May timeframe and the June-December timeframe for each RA compliance year.

Opening comments on the Proposed Decision are due June 11 and reply comments are due June 16, 2025.

Green Access Proceeding

On May 8, 2025, the CPUC issued <u>Draft Resolution E-5367</u> adopting an updated methodology for the cost containment cap for the Disadvantaged Communities Green Tariff (DAC-GT) program. Community Power administers the DAC-GT program for its service area (regionally referred to as the <u>Solar Advantage program</u>), which provides 100 percent clean energy at a 20 percent total bill discount to residential customers who reside in disadvantaged communities as defined by the California Environmental Protection Agency's CalEnviroScreen tool. The program utilizes state funding sources to pay above market costs for power purchase agreements for local, renewable energy projects that meet program requirements, but those costs are limited by a cost containment cap.

Draft Resolution E-5367 largely adopts the updated cost containment cap methodology proposed by the Joint IOUs, which differs from what was proposed by the Joint CCAs, including Community Power, as outlined in the table below.

TABLE 1: Joint IOU and Joint CCA DAC-GT Cost Containment Cap Proposals

Components of Cost	Joint IOU Proposal	Joint CCA Proposal
Containment Cap		
Framework		
Confidential Benchmark	Calculated by each IOU or CCA	Commission Staff should
Value Reference Price	based on a pool of its	conduct a statewide survey
(CBVRP)	competitively solicited PPAs for	to establish a single CBVRP
	similar resources and contract	that applies uniformly
	types over the past 5 years ⁶	across all Load Serving
		Entities ⁷
Public DAC Percentage	120% Multiplier ⁸	175% Multiplier ⁹
Multiplier		
Cost Containment Cap	CBVRP x Multiplier	CBVRP x Multiplier

The Joint CCAs filed comments (Attachment A) on Draft Resolution E-5367, highlighting the shortcomings of the proposal and offering improvements to make the cost containment cap more reflective of current market conditions and enable a successful program.

Provider of Last Resort

On May 28, 2025, the CPUC issued a Ruling providing parties the opportunity to comment on the CPUC guidance necessary to establish a procedural pathway to review applications for Provider of Last Resort (POLR) status.

Based on the record, it is unknown whether any non-investor-owned utility (IOU) entity will seek to apply to serve as POLR in place of the existing IOU POLR for all the IOU's customers within a geographic subset of one or more of the IOU's current territory. Given these uncertainties, this ruling seeks party comment on (1) the Commission's authority over a non-IOU POLR; and (2) a potential procedural path to consider any future applications for POLR status.

The Ruling outlines a potential procedural pathway in which the Commission issues a decision that provides a framework for its regulatory authority over a non-IOU POLR and the services it provides. Such a decision would close the instant proceeding and direct any non-IOU entity that seeks POLR status to first file and serve a Petition for Rulemaking (PFR) at least 12 months before filing an application to assume POLR responsibilities. Upon receipt of a PFR, the Commission would resume its consideration of the threshold questions and topic areas identified in the Scoping Memo.

Opening Comments are due by June 13, and Reply Comments are due by June 20, 2025.

SDG&E Energy Resource Recovery Account (ERRA) Forecast

The purpose of the ERRA Forecast proceeding is to review the forecasted costs that SDG&E will incur to procure energy resources (fuel for power plants, purchased power, and GHG Costs & Allowance Revenues) in the coming year. Based on these forecasts, the CPUC approves rates that allow utilities to recover these costs from customers.

SDG&E 2026 ERRA Forecast Case

On May 15, 2025, SDG&E filed its <u>Application</u> for approval of its 2026 Electric Procurement Revenue Requirement (ERRA), electric sales, and GHG-related forecasts. Additionally, SDG&E requests approval for its proposed 2026 GHG Allowance Return rates, vintage Power Charge Indifference Adjustment (PCIA) rates, and Modified Cost Allocation Mechanism (MCAM) rates. SDG&E anticipates filing its October Update on October 14, 2025.

SDG&E requests a total 2026 forecasted revenue requirement of \$270.5 million, an increase of \$148.2 million from current rates. The proposed rate changes, based on the ERRA revenue requirement and electric sales forecast, would result in a 10.6% increase in the total bundled system average rate, or an additional 3.6 per kWh. Without the Residential and Small Business Semi-Annual California Climate Credit, the rate would rise by 9%, or 3.2 cents per kWh. For unbundled customers, SDG&E's system average delivery with PCIA rates would increase by 8%, or 1.4 cents per kWh, and by 5.1%, or 1 cent per kWh without the Residential and Small Business Semi-Annual CCC.

In terms of customer impact for customers using 400 kWh per month, a typical bundled non-CARE residential customer using 400 kWh per month may experience an increase of 14.8% (\$23). A typical bundled CARE residential customer's bill may increase by 18.3% (\$16). For unbundled customers, a non-CARE residential bill would rise by 12.2% (\$10), and a CARE customer's bill would increase by 18.0% (\$8).

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 2024 ERRA Compliance Case

San Diego Gas & Electric filed its 2024 Energy Resource Recovery Account Compliance application with the California Public Utilities Commission. The filing requests Commission verification that all procurement-related activities, including contract administration fuel procurement and least cost dispatch were conducted in compliance with applicable CPUC decisions and statutory requirements throughout the calendar year

2024. SDG&E is not requesting any rate changes as part of this application. The utility is seeking approval of recorded entries in a range of balancing and memorandum accounts. The application also provides a summary of public safety power shutoff events during 2024 and their associated customer impacts, though no disallowances are proposed in this filing. Responses and protests to the application are due July 2.

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 were filed on May 9. <u>SDG&E</u>'s reply brief argues that the CPUC should be authorized to recover the costs of the Green Tariff program from all customers via the Public Purpose Program Rate. The <u>Joint CCAs</u> reply brief urges the CPUC to reject SDG&E's request to recover its outstanding Green Tariff undercollections through the Public Purpose Program rate component from all customers and instead determine a path forward for disposition of these balances that maintains customer indifference. To the extent the Commission determines that SDG&E's outstanding Green Tariff-related undercollections are recoverable, the Commission should require SDG&E to recover those amounts from former program participants. A Proposed Decision is expected in the third quarter of 2025.

Energy Efficiency

General Energy Efficiency Proceeding (R.25-04-010): Order Instituting Rulemaking
On April 24, 2025, the CPUC approved a new Order Instituting Rulemaking (OIR) for
Oversight of Energy Efficiency Portfolios, Policies, Programs, and Evaluation. On May
19, 2025, San Diego Community Power on behalf of San Diego Regional Energy Network
(SDREN) participated in Joint REN opening comments on the OIR. Additional details on
the preliminary scope of the proceeding and the Joint REN opening comments can be
found in Item 8 of the May 2025 Community Power Board of Directors agenda packet.

On May 29, 2025, San Diego Community Power, on behalf of SDREN, submitted <u>reply comments on the OIR</u>. SDREN urged the Commission to prioritize reforms that improve energy efficiency (EE) portfolio performance and cost-effectiveness before considering SDG&E's request to withdraw from energy efficiency administration. The filing supports proposals from stakeholders such as the <u>California Technical Forum (CalTF)</u>, Small

Business Utility Advocates (SBUA), and California Energy and Demand Management Council (CEDMC) to streamline EE rules, enhance evaluation processes, consider non-energy benefits, and integrate demand-side management strategies. SDREN opposed Public Advocates Office's proposals to impose new cost-effectiveness thresholds on RENs, citing their equity-focused mandate, and RENs' unique customer base. SDREN also supported the Labor Coalition's recommendation to add workforce concerns to the proceeding scope, and the Center for Accessible Technology's recommendation to expand the CPUC's definition of hard-to-reach customers to include individuals with disabilities.

A prehearing conference will be held on June 17, 2025. At this conference, parties will have an opportunity to provide additional input on the scope and schedule for the proceeding. Thereafter, the CPUC will issue a scoping ruling that will indicate the final scope and schedule.

General Energy Efficiency Proceeding (R. 25-04-010): Potential and Goals Study

On May 1, 2025, the CPUC issued a Ruling inviting comment on the Draft Potential and Goals Study (Draft Study) for 2026 and beyond—a study that informs electricity and natural gas efficiency savings targets for the IOUs. San Diego Community Power, on behalf of SDREN, filed opening comments which are summarized in Item 8 of the May 2025 Board of Directors agenda packet.

On May 30, 2025, SDG&E submitted <u>reply comments</u> on the Draft Study. SDG&E urged the Commission to disregard comments from SDREN, BayREN, and 3C-REN, asserting that their critiques of SDG&E's proposed withdrawal from energy efficiency administration were procedurally inappropriate in the context of the P&G Study. SDG&E further disputed claims that its proposed \$300 million budget reduction would not necessarily reduce customer rates. SDG&E also opposed recommendations to adopt savings goals based on aggressive electrification assumptions, instead recommending the Commission adopt savings goals based on a more conservative electrification forecast and only accounting for savings from measures that pass cost-effectiveness screens.

SDG&E Application to Withdraw from Regional Energy Efficiency Program Administration (A. 25-04-014)

On April 25, 2025, SDG&E submitted an <u>application</u> to the CPUC requesting approval to revise its 2024–2031 Energy Efficiency (EE) Business Plan. The proposal is summarized in Item 8 of the <u>May 2025 Community Power Board of Directors agenda packet</u>.

Responses and protests to the application were due on May 29, 2025. A protest indicates a party opposes the relief requested in an application, whereas a response does not. Community Power on behalf of SDREN, the <u>Public Advocates Office</u>, and the <u>Small Business Utility Advocates</u> filed protests. <u>Southern California Edison</u> filed a response. Community Power filed a protest jointly with other RENs and the City of San Diego (joint parties' protest, Attachment F). The protest urges the Commission to defer consideration

of SDG&E's request until foundational legal and policy questions - such as whether IOU withdrawal is permissible under current law - are resolved in the new EE proceeding. The joint parties' protest argues that SDG&E's application lacks sufficient factual support, understates portfolio benefits, and overstates cost savings. They further note that many issues raised in the application, including cost-effectiveness challenges and program overlap, are already slated for evaluation in the EE proceeding. The protest emphasizes the importance of maintaining equitable and comprehensive EE service coverage and urges the Commission to ensure any withdrawal process is deliberate, transparent, and aligned with state energy and climate goals.

SDG&E filed its <u>reply</u> to the joint parties' protest on June 9, 2025. SDG&E reasserted that its proposal is narrow in scope, procedurally appropriate as a stand-alone application, and necessary to improve ratepayer affordability. The filing disputes claims that the proposal should be delayed until the EE proceeding resolves broader policy questions, arguing that such deferral would be inefficient. SDG&E further contends that continued access to statewide EE programs and its retained regional Codes and Standards program will ensure sufficient service coverage for all customers, including those outside the SDREN footprint. The utility maintains that its portfolio underperforms relative to cost, and statute allows flexibility in achieving their CPUC-established savings targets. SDG&E urges the Commission to disregard protests and proceed with timely action on its application.

The CPUC is expected to decide on SDG&E's request for an expedited application by May 16, 2025.

B) State Legislative Activities Update

Community Power Seeks Amendment to Customer Billing Legislation, Which Has Failed to Advance

AB 1295 (Patterson) would have created a new process at the CPUC to potentially make changes to customer billing. It is supported by San Diego Gas & Electric. Community Power shares the author's goal of providing clear, understandable, and accurate bills to customers. However, AB 1295 (Patterson) does not consider the role of CCAs in the customer billing experience, and the legislation also fails to take a comprehensive approach to all portions of customer bills. To that end, Community Power submitted an oppose unless amended position letter recommending:

- 1. An amendment to ensure that CCAs are explicitly consulted and involved in the development and implementation processes envisioned by the bill.
- 2. An amendment to ensure all relevant billing details are considered, including fees and delivery charges.
- 3. An amendment that seeks to better balance cost-effective bill delivery methods that meet diverse customer needs.

Soon after Community Power issued its position letter (Attachment B), the bill was held by the Assembly Committee on Appropriations on their suspense file on May 23, meaning it will not move forward this year.

Community Power Supported Legislation Passes Key Legislative Hurdle

June 6 marked the House of Origin deadline in the Legislature, meaning bills introduced in the Senate or the Assembly must have passed their respective legislative chamber to be eligible for further consideration in the legislative process. It generally marks the half way point of the legislative year, which is scheduled to end on September 12. The following Community Power supported bills advanced past the House of Origin deadline:

- <u>AB 259 (Rubio)</u> would extend alternative teleconferencing procedures under the Brown Act through 2030.
- AB 915 (Petrie-Norris): This would have advanced a conversation about the Clean Energy Reliability Investment Plan (CERIP), which could provide funding for distributed assets. Although Community Power supported the April 22 version of the bill, amendments on May 23 removed the language relevant to Community Power. As a result, Community Power no longer has a support position on the bill.
- <u>SB 302 (Padilla)</u>: This would conform state tax law to federal tax law with respect to transferable tax credits under the Inflation Reduction Act, potentially saving 1%-6% on project costs. It is sponsored by American Clean Power, the Solar Energy Industries Association, and the Large-Scale Solar Association.
- <u>SB 330 (Padilla)</u>: This would address ratepayer affordability issues by establishing a pilot project to publicly finance certain electrical transmission facilities. It is sponsored by The Utility Reform Network and Net Zero California.
- SB 540 (Becker): This would facilitate the California Independent System Operator's ability to operate and participate in a West-wide energy market that will deliver affordability, reliability, and greenhouse gas emission reduction benefits. It is sponsored by the Coalition of California Utility Employees, the State Association of Electrical Workers, the Environmental Defense Fund, and the Natural Resources Defense Council. It is also supported by the California Community Choice Association, among others. While the bill was approved by the Senate, it was approved with language that may no longer comport with the vision of an independently governed regional energy market capable of facilitating transactions with load-serving entities located in other states. Without an independent market governance structure, the potential regional market envisioned by SB 540 would not attract participants from other states, such as Washington and Oregon. Community Power continues to support the bill and is part of a coalition urging the Assembly to modify some of the bill's challenging provisions. The coalition letter is included as an attachment.
- <u>SB 710 (Blakespear)</u>: This would eliminate the sunset date on a law that allows rooftop solar and battery storage systems to be excluded from a property tax reassessment. It is sponsored by the California Solar & Storage Association.

<u>SB 239 (Arreguin)</u> would modernize teleconferencing protocols for subsidiary bodies, like the Community Advisory Committee. It is sponsored by the League of California Cities and California State Association of Counties, among others. It did not advance past the House of Origin deadline. Instead, the contents of the bill were amended into <u>SB 707 (Durazo)</u>, which is a larger Brown Act reform bill. Community Power is reviewing the legislation.

Legislative positions and associated letters of support or opposition are kept up-to-date on this Community Power webpage: https://sdcommunitypower.org/legislative-priorities/

Several Battery Safety Bills Continue to Advance in the Legislative Process

The Legislature is advancing the following two bills to establish new safety standards for battery energy storage. Each bill advanced passed the House of Origin deadline:

- SB 283 (Laird): 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.
- AB 615 (Davies): This would require that an entity that uses the statewide permitting process for a battery project has an emergency response and action plan and must ensure the project meets NFPA 855.
- <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.
- 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.

The following bills are not advancing this year in the legislative process:

- 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. It was never set for a hearing by the
 Assembly Committee on Utilities & Energy.
- <u>AB 434 (DeMaio)</u>: This would impose a 2-year moratorium on battery energy storage facilities while the State Fire Marshal adopts guidelines and minimum standards. It was never set for a hearing in the Assembly Committee on Utilities & Energy.
- <u>AB 588 (Patel)</u>: This would create a working group to recommend potential solutions to enhance building safety with respect to lithium batteries. It was held by the Assembly Appropriations Committee on their suspense file.

Update on the State Budget

The Governor recently released his updated May Revise budget <u>proposal</u>. Notably, the Governor now expects the state to have a \$12 billion deficit this year, an issue he proposes to solve through fund shifts, use of reserves, and cuts. As part of his updated budget proposal, the Governor also released a proposal to rename the state's Cap & Trade Program to Cap & Invest, and to extend its statutory authority from 2030 through 2045. The Governor notes that extending the program would result in \$60 billion through 2045 for the California Climate Credit, the biannual credit that is applied to electricity and natural gas bills.

The May Revise includes reductions for certain energy programs. Most notably, the May Revise eliminates the January budget proposal to provide \$180 million to the CEC's Distributed Electricity Backup Assets (DEBA) program, a funding proposal that Community Power supports. DEBA can help support distributed energy resources, like batteries. That program was slated to be funded from Cap & Trade revenues and with extension of the program now officially being considered, the Governor and Legislature are likely to hold off on approving new expenditures until an extension of the program is agreed to. Community Power, along with other CCAs, issued a letter – the third this year – urging inclusion of DEBA funding in the final budget agreement. The letter is included as an attachment (Attachment D).

On June 9, the Legislature <u>announced</u> they had reached an agreement on the budget framework. The Legislature's budget agreement agrees with the Governor's May Revise proposal to slash DEBA funding. It is likely the Legislature and Governor will take additional budget actions in August, so there may be further opportunity to advocate for DEBA funding.

Advancing Solutions to Ensure CCA Low-Income Customers Are Eligible for Battery Incentives

The 2023 State Budget provided \$280 million for the Self-Generation Incentive Program (SGIP) at the CPUC. The program has historically been ratepayer funded. It provides rebates to customers for batteries based on kilowatt hour installed. The budget appropriation from the State was intended to benefit low-income customers, which are defined as those live in a single-family home with a household income at or below 80 percent Area Median Income or at least 80 percent of the apartment building residents have incomes at or below 60 percent Area Median Income.

To be eligible for an incentive, a low-income customer must enroll in a qualified demand response program. Community Power filed to qualify the Solar Battery Savings program under the CPUC rules. However, the CPUC rejected the filing arguing the program does not meet their narrow definition of a demand response program. The CPUC is also not approving filings from other CCAs. As a result, low-income Community Power customers – and customers for all CCAs – cannot apply for an SGIP battery incentive. In fact, there isn't a workable qualified demand response program throughout all of San Diego. SDG&E

offers a rate under SGIP rules, but Community Power customers would have to unenroll from CCA service and be placed on a volatile six-month transitional rate, before being eligible to enroll in the SGIP qualified rate, which is only open to bundled customers.

Community Power partnered with other CCAs to advise the Legislature about the CPUC's rules that block CCA customer participation. As a result, a group of 18 legislators sent a letter to the CPUC urging them to qualify CCA programs for SGIP. Among those that signed the letter are four legislators from San Diego, the Chair of the Senate Committee on Budget and Fiscal Review, and the Chair of the Senate Committee on Energy, Utilities, and Communications. The letter is included as an attachment (Attachment E).

Additionally, the Legislature Budget <u>agreement</u> includes trailer bill language – a change to statute that would accompany the budget bill – to affirmatively qualify CCA programs under the SGIP program. It remains to be seen if this budget trailer bill will be passed and signed into law.

C) Federal Activities Update

For an update on federal matters, please refer to the staff report for Item No. 12, titled "Tariffs, Tax Credits and Executive Orders: New-Build Market Outlook Update."

FISCAL IMPACT:

N/A

ATTACHMENTS:

A: Joint CCA Comments on Draft Cost Cap Resolution

B: AB 1295 (Patterson) Letter

C: SB 540 (Becker) Coalition Letter

D: DEBA Support Letter

E: Legislative Letter re SGIP

F: Joint Parties' Protest to SDG&E Application to Withdraw

G: Letter to ED Regarding Self-Generation Incentive Program (SGIP)

ITEM 8 ATTACHMENT A

Braun Blaising & Wynne, P.C.

Attorneys at Law

May 28, 2025

Via Electronic Mail

Energy Division Attention: Tariff Unit California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102 Via E-Mail: EDTariffUnit@cpuc.ca.gov

Re: Joint Community Choice Aggregators' Comments on Draft Resolution E-5367

Dear Energy Division Tariff Unit:

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC" or "Commission") and the notice accompanying Draft Resolution E-5367, Ava Community Energy, Clean Power Alliance of Southern California, the City and County of San Francisco, acting by and through its Public Utilities Commission, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy Authority, Pico Rivera Innovative Municipal Energy, San Diego Community Power, San Jacinto Power, and San José Clean Energy (collectively, the "Joint Community Choice Aggregators" or "Joint CCAs") submit these comments on Draft Resolution E-5367, Approving with Modifications Pacific Gas & Electric Company's and Southern California Edison Company's DAC-GT Cost Containment Cap Proposal Update, to be considered at the June 12, 2025 Commission meeting ("Draft Resolution").

The Draft Resolution, as written, inhibits the ability of program administrators ("PAs") to successfully procure under the Disadvantaged Communities Green Tariff ("DAC-GT") program. The proposed cost containment framework is built on unsupported assumptions, employs a multiplier that is inadequate under current and foreseeable market conditions, and neglects to establish a process to timely resolve the proposal's likely failures. If adopted without significant revision, the Resolution will render the DAC-GT program unworkable for many PAs, particularly Community Choice Aggregator ("CCA") PAs, and will undermine the Commission's statutory objective of expanding clean energy access in disadvantaged communities ("DACs"). These comments identify material, factual, and technical errors in the Draft Resolution and propose targeted corrections to ensure the program can be successfully implemented across all service territories. The Joint CCAs offer necessary revisions in these comments that balance the success of future DAC-GT solicitations, the advancement of economic and environmental benefits for low-income customers in DACs, and customer affordability more broadly.

BACKGROUND

On May 30, 2024, the Commission adopted Decision ("<u>D.</u>") 24-05-065, which ordered Pacific Gas and Electric Company ("<u>PG&E</u>") and Southern California Edison Company ("<u>SCE</u>") (collectively, the "<u>Joint IOUs</u>") to work with participating CCAs to develop a proposal for updating the cost containment cap applicable to the DAC-GT program.¹ The Commission further ordered PG&E and SCE to submit a Tier 2 Advice Letter proposing an updated methodology for the cost containment cap that reflects the option for pairing storage.²

The DAC-GT program, initially authorized by D.18-06-027 and implemented via Resolution E-4999, provides eligible residential customers in DACs with 100 percent renewable electricity at a 20 percent bill discount. To limit non-participating ratepayer subsidization, Resolution E-4999 also established a numeric cost containment cap threshold. The cost containment cap was originally set at 200 percent of the highest executed contract price in either the most recent Renewable Auction Mechanism's ("RAM") as-available peaking category, or the previous Green Tariff, whichever was higher.³

Pursuant to D.24-05-065, the Joint IOUs filed Joint Advice Letter SCE 5362-E and PG&E 7363-E on August 28, 2024, outlining a proposed methodology for updating the DAC-GT cost containment cap. The Joint IOUs held two meetings with the Joint CCAs, on July 18 and July 24, 2024, and corresponded via email to facilitate development of the proposal. The Joint IOUs' proposal identified two components of the updated cost containment cap methodology: (1) a Confidential Benchmark Value Reference Price ("CBVRP"), calculated as the average price of historical executed Power Purchase Agreements ("PPAs") for similar technologies and contract types over a defined time period, and (2) a DAC Percentage Multiplier ("Multiplier"), intended to account for cost differences specific to DAC-GT projects. Under this structure, the final cost containment cap is equal to the product of the CBVRP and the Multiplier.⁴

While the Joint IOUs and Joint CCAs generally agreed that there should be two cost containment cap elements, they proposed different implementation details, including the appropriate Multiplier and whether CBVRPs should be unique to each PA or uniform across the state. In turn, the Joint IOUs filed public and confidential versions of the advice letter. The public version provided a general outline of the proposed methodology and implementation details. Confidential Appendices A and B contain the Joint IOUs' characterization of the Joint CCAs' proposal and the Joint IOUs' confidential critiques, respectively. San Diego Gas &

¹ D.24-05-065, Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program, issued June 7, 2024, at p.133.

² Id. at p. 171 (Ordering Paragraph ("OP") 4).

³ Commission Resolution E-4999, Pursuant to Decision 18-06-027, Approving with Modification, Tariffs to Implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs, at p. 66 (OP 1.dd).

⁴ Joint Advice Letter SCE AL 5362-E and PG&E AL 7363-E, Cost Containment Cap Proposal Update for Disadvantaged Communities Green Tariff Pursuant to Decision 24-05-065, Submitted August 28, 2024, at p. 3.

Electric Company ("<u>SDG&E</u>") did not submit a corresponding advice letter due to its Commission-authorized termination of its DAC-GT program, reflecting its uniquely small, bundled service customer base.

On September 17, 2024, the Joint CCAs, the Coalition for Community Solar Access ("CCSA"), the Public Advocates Office at the California Public Utilities Commission ("Cal Advocates"), and the Solar Energy Industries Association ("SEIA") submitted protests to the Joint Advice Letter. The Joint IOUs replied to the protests and submitted a Joint Supplemental Advice Letter with expanded justification for confidentiality designations and an updated summary of the Joint CCAs' proposals. Within their Joint Supplemental Advice Letter, the Joint IOUs also argued that the PAs should perform their own CBVRP analyses and submit them to independent evaluators for review.

The Joint CCAs submitted a protest to the Joint Supplemental Advice Letter on November 26, 2024, providing additional justifications regarding the confidentiality of the Joint IOUs' filings, the inadequacy of the proposed Multiplier, and the failure to provide a meaningful statewide methodology for calculating the CBVRP. On December 5, 2024, the Joint IOUs filed their reply defending their confidentiality designations, rejecting the proposed 175 percent Multiplier, and maintaining that PA-specific CBVRPs better reflect locational and contractual variation.

On May 8, 2025, the Commission issued Draft Resolution E-5367 which proposes to adopt the Joint IOUs' Advice Letter with modifications. As set forth below, the Joint CCAs submit these comments to identify material, factual, and technical errors in the Draft Resolution's support of the Joint IOUs' cost containment cap proposal. As detailed in the sections that follow, the proposed cost containment framework is unworkable due to its reliance on insufficient and non-comparable executed contract data, an inadequately low multiplier, and the absence of a contingency process to address foreseeable procurement failures. Adoption of the Draft Resolution in its current form would result in an outcome that is neither just nor reasonable and is inconsistent with the applicable Commission standards.

COMMENTS

I. The Proposed CBVRP Methodology is Unworkable

The Draft Resolution's proposed cost containment cap framework is structurally unsound and fails to address the realities of DAC-GT implementation. First, it relies on a methodology that presumes all PAs, including CCAs, have access to a sufficient pool of executed, comparable PPAs. This assumption is not supported by the record and does not reflect the reality of CCA DAC-GT procurement. Second, the Draft Resolution defines "comparable" contracts too narrowly, focusing on resource and contract type while omitting critical cost drivers like project

⁵ Joint Advice Letter SCE 5362-E-A and PG&E 7363-E-A, Supplement to 5362-E et al., Cost Containment Cap Proposal Update for Disadvantaged Communities Green Tariff Pursuant to Decision 24-05-065, Submitted November 6, 2024.

size. Third, the fallback option of allowing CCAs to adopt IOU-developed CBVRPs is not a reasonable substitute. IOU procurement portfolios often differ significantly in size and scope, leading to distorted cost containment caps that CCAs cannot reasonably procure under. Finally, the framework fails to incorporate a viable offramp for situations where a bid fails to produce adequate solicitations. To correct this, the Commission should authorize the use of a neutral third-party entity to pool anonymized contract data from multiple PAs to generate regionally appropriate CBVRPs. Without these changes, the adopted cost containment cap will not reflect actual market conditions or program constraints, and the DAC-GT program will be unworkable for many PAs.

a. The Draft Resolution Incorrectly Assumes that All Program Administrators Have Sufficient Executed PPAs to Calculate an Effective CBVRP

The Draft Resolution proposes a CBVRP methodology that requires each PA to calculate its CBVRP by surveying its executed contracts and "pooling prices from a comparable set of competitively solicited power purchase agreements... the entity executed...." The PPAs are to be drawn from a pool of contracts (1) for similar resources, (2) for similar contract types, and (3) that have been executed within the last five years. These CBVRPs are then to be reviewed by an Independent Evaluator for reasonableness.

The proposed CBVRP methodology rests on a factual error in presuming that all DAC-GT PAs have, or each IOU has, a sufficient set of executed, comparable competitively solicited PPAs that satisfy the Draft Resolution's criteria. Many of the Joint CCAs do not have a sufficient history of executed contracts from which to survey to set their own CBVRP that meets the requirements and standards proposed in OP 2, or which reflect current market prices and developer costs. As a result, the CCAs with few or no executed DAC-GT PPAs may need to rely on surveying executed contracts that do not reflect DAC-GT market conditions or developer costs to calculate their CBVRP. 10

While CCAs have the option to survey non-DAC-GT PPAs, these contracts are often for larger-scale projects and may result in a cost containment cap that does not account for costs associated with developing projects that meet DAC-GT requirements. Alternatively, CCAs may need to use the CBVRP set by their respective IOU as proposed in the Draft Resolution.¹¹

⁶ Draft Commission Resolution E-5367. Pursuant to Decision 24-05-065, Approving with Modifications Pacific Gas & Electric Company's and Southern California Edison Company's DAC-GT Cost Containment Cap Proposal Update, May 8, 2025, at p. 18 (OP 2).

⁷ *Id.* at p. 13.

⁸ Ibid.

⁹ D.24-05-065, at p. 162 (Findings of Fact 78).

¹⁰ While Community Solar Green Tarriff ("CSGT") projects should be considered comparable and similar, only one CCA continues to offer a CSGT program. In turn, for purposes of these comments, "DAC-GT PPAs" will encompass executed CSGT PPAs.

¹¹ Draft Resolution E-5367, at p. 13.

However, the IOU may also have limited or no history of comparable executed contracts. The Joint CCAs address the proposal for CCAs to leverage the CBVRP set by the IOU for their service territory later in these comments.

In surveying CCA-executed non-DAC-GT PPAs, CCAs will likely need to review contracts that ultimately skew towards resources that exceed the maximum DAC-GT system size of 20 megawatts ("MW"). On a per MW basis, non-DAC-GT PPAs that exceed 20 MW tend to result in lower contract prices than DAC-GT PPAs, at least due to economies of scale. Surveying those PPAs will result in a cost containment cap that is undervalued for the DAC-GT program, which would not reflect market conditions or developer costs since DAC-GT PPAs historically have resulted in projects that do not exceed 3MW. 12

b. The Draft Resolution's Definition of "Comparable" PPAs Is Technically Incomplete and Risks Skewing Cost Containment Caps

The Draft Resolution defines "comparable" PPAs based on similar resource type, similar contract type, and whether the contract has been executed within the last five years, but fails to incorporate project size as a critical metric. DAC-GT projects must be sized between 500 kW and 20 MW and interconnected at the circuit, load or substation level. To date, projects executed through the DAC-GT program have not exceeded 10MW, and when excluding PG&E, have not exceeded 3MW. Hese specifications result in pricing structures that differ significantly from large, utility-scale projects. The Draft Resolution errs in including executed contracts for projects significantly larger than the DAC-GT program size cap in the CBVRP calculation, as they will further skew the CBVRP downward, making the cost containment cap unworkable for a successful program. As such, the Joint CCAs urge the Commission to expand the guidance on what constitutes a "comparable" project to projects sized between 500 kW and 20 MW to ensure objectivity and consistency in the reasonableness review.

c. IOU CBVRPs Do Not Function as a Reasonable Proxy for CCAs with Insufficient Data

To accommodate CCAs with insufficient comparable contract history, the Draft Resolution allows CCA PAs to adopt the CBVRP set by the IOU for the relevant service territory. This proposed system presents a significant technical error: IOU-calculated CBVRPs

¹² See R.14-07-002, Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering, DAC-GT PA's First Quarter 2025 DAC-GT Quarterly Reports submitted by April 30, 2025.

¹³ Draft Resolution E-5367, at p. 13.

¹⁴D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities, issued June 22, 2018, at p. 103 (OP 11) and *see* p. 51.

¹⁵ Draft Resolution E-5367 at p. 18 (OP 2).

are not reasonably comparable or applicable for most CCAs due to differences in program size, procurement scale, and resource expectations. For example, five CCA PAs have a remaining DAC-GT capacity allocation under 4MW, significantly limiting the size of eligible projects and making their programs structurally different from the IOUs. ¹⁶ Further, it is unclear whether each of the IOUs will have sufficient comparable executed PPAs when excluding non-DAC-GT PPAs for projects that exceed 20MW that would otherwise skew the CBVRP downward. Even within those bounds, available IOU data may not represent the range of project sizes eligible under the DAC-GT program and result in a CBVRP that effectively excludes projects that more accurately represent bids expected to be received through the program based on the history of the DAC-GT program to date. As such, a determination of whether the data pool of IOU PPAs is sufficient should consider whether there is a reasonable representation of project sizes. Moreover, for CCAs using the CBVRP set by the IOU, it is critical that the CCA PA be provided the opportunity to review the IOU's methodology and be able to comment and/or protest if necessary.

d. The Commission Should Direct a Neutral Third Party to Pool Comparable PPA Data for Regional or LSE-Specific CBVRPs

For CCAs without sufficient historical data, and where IOU CBVRPs are not appropriate, the Commission should select and authorize a neutral third-party entity to pool anonymized pricing data from a comparable set of competitively solicited PPAs executed by participating DAC-GT PAs that satisfy the CBVRP categorical requirements. The third party would then develop a CBVRP for individual CCA PAs as needed based on comparable projects within a given geographic proximity.

As an example, the third-party entity could pool executed PPA data for a CCA PA based on a regional geographic boundary or once a sufficient number of data points, as determined by the third party, is reached. This approach would mitigate the risks of data insufficiency or data that is not representative of expected project bids and ensure that cost containment caps reflect actual market trends and comparable project characteristics. This third-party structure would improve consistency, transparency, and efficiency while respecting the confidentiality of underlying contracts. Moreover, utilizing a single third-party entity for all CCA PAs using this approach would be a more prudent use of ratepayer funds as opposed to each PA contracting with a third party.

II. The 120% Multiplier is Likely Too Low to Receive Viable Project Bids and Should be Increased to 140%

In addition to the issues associated with the CBVRP, the Draft Resolution's proposed 120% Multiplier does not adequately account for actual market conditions and above-market costs beyond project siting. The Draft Resolution supports the 120% Multiplier primarily on the basis that expanding the DAC-GT siting eligibility to include locations within five miles of a DAC "should reduce developers' costs." While some limited cost savings may result from this

¹⁶ D. 24-05-065, at pp. 138-139.

¹⁷ Draft Resolution E-5367, at p. 14.

geographic expansion, the Draft Resolution treats siting as the sole or primary driver of project costs for distributed projects of this scale. This reasoning ignores a wide array of other factors that materially affect project costs and does not justify an 80% reduction in the Multiplier.

Notably, the Draft Resolution fails to consider external economic pressures that are likely to increase project costs in the near term, such as the impacts of impending tariffs and the potential termination or reduction of the Investment Tax Credit ("ITC"). The ITC is a longstanding federal tax credit incentive for solar development, in place since 2006 and scheduled to step down to 0% by 2036. ¹⁸ Since 2006, the ITC has had, and continues to have, a significant impact on reducing the costs of solar development and driving the growth of solar. Currently, Congress is considering repealing or reforming the ITC, with proposals ranging from accelerating the existing ITC phaseout schedule to terminating the ITC in the near-term. The uncertainty of the future of the ITC in addition to the uncertainties of potential tariffs on the solar market could result in significant increases in costs. These potential near-term cost impacts have not been taken into consideration in the Draft Resolution. By dismissing these material economic pressures and focusing narrowly on siting costs, the Draft Resolution risks understating the multiplier required to attract viable project bids.

The Draft Resolution also errs in referencing the bid price cap adopted for the Enhanced Community Renewables ("<u>ECR</u>") program as a justification for selecting the 120% Multiplier. ¹⁹ The 120% Multiplier was adopted for unrestricted ECR projects, which lacked the size, location, and participant restrictions applicable to DAC-GT projects. In contrast, the ECR Environmental Justice ("<u>EJ</u>") Reservation category, which shares many of the characteristics of the DAC-GT program, including restrictions on siting and customer eligibility criteria, was authorized with a 200% multiplier. ²⁰ The Draft Resolution fails to explain why the more analogous ECR EJ category is not the appropriate point of comparison. ²¹

Finally, D.24-05-065 discontinued future procurement under ECR due to the program's shortcomings. This limited participation and ultimate discontinuance underscores that a 120% cap was not effective for projects serving disadvantaged communities and should not be used as a benchmark for the DAC-GT program, which is designed to benefit those very communities.

In the Draft Resolution, the Commission declined to set the multiplier at 175%, citing concerns that such a level may not reflect current market conditions and could negatively impact

²⁰ D.15-01-051, Decision Approving Green Tariff Shared Renewables Program for San Digo Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to Senate Bill 43, Issued February 2, 2015, at p. 10.

¹⁸ See U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, Federal Solar Tax Credits for Businesses, February 2024.

¹⁹ Draft Resolution E-5367, at p. 15.

²¹ See D.15-01-051, at pp. 4-5. Capacity for the ECR EJ category was reserved for facilities no larger than 1 MW "located in areas previously identified by the California Environmental Protection Agency... as the most impacted and disadvantaged communities... as the most impacted and disadvantaged communities."

non-participant affordability by increasing the overall DAC-GT program subsidy.²² Unfortunately, the proposed 120% Multiplier in the Draft Resolution does not reflect market conditions particularly for investments in or near DACs, and will likely not result in viable project bids. The proposed Multiplier also does not account for the foreseeable near-term market changes mentioned above. This is particularly concerning considering PA's CBVRPs under the methodology proposed in the Draft Resolution are likely to underestimate DAC-GT market conditions and developer costs as previously discussed.

The Joint CCAs recommend the Commission adopt a reasonable increase in the Multiplier to 140%. A 140% Multiplier would improve the likelihood of successful bids by equipping PAs to better navigate the challenges with the proposed cost containment cap methodology and accommodate potential rapid and near-term market changes while mitigating the Commission's concerns around a higher cost containment cap as raised in the Draft Resolution.

a. The Final Resolution Must Include a Built-In Contingency Process

As discussed above, the Draft Resolution's proposed adoption of the Joint IOU's CBVRP and implementation of a 120% Multiplier will likely result in cost containment caps that are too low to support viable DAC-GT project development. As such, it is critical that the Final Resolution include a contingency process to address the possible scenario where a PA receives zero conforming bids at or below the cost containment cap that also meet all program requirements as established by the Commission. PAs must have access to a well-defined procedural pathway to update the cost containment cap in the instance that it proves to be infeasible.

To address this, the Joint CCAs recommend that the Commission incorporate in the Final Resolution a contingency option for each PA to propose and justify an adjustment to their cost containment cap multiplier via an Advice Letter submittal when zero conforming bids are received (1) at or below the cost containment cap and (2) otherwise meet all program requirements as established by the Commission. The PA's proposed adjusted cost containment cap multiplier must be substantiated by a PA's solicitation results and must not exceed 175% of the CBVRP. In the PA's Advice Letter filing, subject to confidential protection of market sensitive data, the PA would summarize the results of their solicitation, including the number of bids received, the percentage of bids that exceeded the cost containment cap, and if the bids would have fulfilled program requirements. Pending the Commission's review of the PA's Advice Letter submittal, the PA may adjust the multiplier for its cost containment cap. This process would preserve Commission oversight while providing necessary flexibility for PAs to adapt to evolving market conditions, including the aforementioned ITC and tariffs.

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²² Draft Resolution E-5347, at p. 13.

Joint CCAs' Comments on Draft Resolution E-5367 May 28, 2025 Page 9

CONCLUSION

The Joint CCAs thank the Commission for its consideration of these comments.

Respectfully,

/s/ Jessica Melms

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Sacramento, CA 95816
(916) 326-5812
Melms@braunlegal.com

On behalf of the Joint Community Choice Aggregators

cc (via e-mail): Connor Flanigan, SCE (<u>AdviceTariffManager@sce.com</u>)

Adam Smith, SCE (<u>KarenGansecki@sce.com</u>)

Sidney Bob Dietz II, PG&E (PGETariffs@pge.com)

Service List: A.22-05-022, R.14-07-002

ITEM 8 ATTACHMENT B





May 12, 2025

The Honorable Buffy Wicks Chair, Assembly Committee on Appropriations 1021 O Street, Suite 8220 Sacramento, CA 95814

RE: Oppose Unless Amended - AB 1295 (Patterson) Public utilities: bills and notices: consolidation and transparency (Amended as of 4/22/2025)

Dear Assemblymember Wicks,

We write this letter on behalf of San Diego Community Power (SD Community Power) and Clean Energy Alliance (CEA) to express our oppose-unless-amended position on AB 1295 (Patterson) related to customer billing for energy. We've had productive conversations with the author's office and expect them to continue. SDCP shares the author's goal of providing clear, understandable, and accurate bills to our customers. As outlined below, we suggest a few clarifying amendments to better ensure AB 1295 (Patterson) effectively enhances the billing experience for all customers, including those served by community choice aggregators (CCAs) like SD Community Power and CEA.

We suggest an amendment to ensure that CCAs are explicitly consulted and involved in the development and implementation processes outlined in AB 1295 (Patterson). Currently, AB 1295 (Patterson) allows the California Public Utilities Commission to seek and consider input from utilities and other relevant stakeholders to inform its evaluation. It does not, however, specify that CCAs must be included in this consultation process. Under law, CCA generation charges are assessed through a consolidated bill issued by the Investor Owned Utility (IOU) that provides delivery services. As organizations founded and governed by the community, we welcome the opportunity to have direct input on changes to customer billing.

We also seek a clarifying amendment to ensure that all relevant billing details are taken into consideration. This includes fees and delivery charges collected on the consolidated bill. A comprehensive approach will provide customers with a truly transparent view of their total energy costs. Finally, we believe it is important to balance the need for cost-effective billing delivery with ensuring accessibility for all customers. We suggest an amendment that acknowledges this balance, allowing for various delivery methods that meet diverse customer needs while remaining fiscally responsible.

We want to emphasize that SD Community Power and CEA have been actively engaged in discussions with the author's staff regarding these proposed amendments. We are optimistic that with these amendments, AB 1295 (Patterson) can enhance billing transparency and improve the customer experience across California. Our draft amendments are attached.

SD Community Power and CEA are Community Choice Aggregators (CCAs) serving nearly 70% of the electric load throughout San Diego County, both with a goal of providing 100% renewable energy by 2035 at competitive rates.

If you have any questions, please contact Amy Costa at amy@fullmoonstrategies.com.

Sincerely,

Patrick Welch

Associate Director of Legislative Affairs

SD Community Power

Tatrick Welch

Greg Wade

Chief Executive Officer

CEA

Cc: The Honorable Joe Patterson, 5th Assembly District

ATTACHMENT

SD Community Power: Suggested Amendments to **AB 1295 (Patterson)** Public utilities: bills and notices: consolidation and transparency. (As amended April 22, 2025)

SECTION 1. Section 739.17 is added to the Public Utilities Code, to read:

739.17. (a) On or before June 1, 2026, the commission shall do both of the following:

- (1) Evaluate all customer billing and noticing requirements existing on as of January 1, 2026, that apply to gas or electric utilities.
- (2) Identify and consider potential avenues to consolidate notices and enhance billing transparency, including, but not limited to, avenues that would do both of the following:
 - (A) Clearly show the source and value of each charge within each customer's consolidated bill, including, but not limited to, commodities, delivery, taxes, fees, public purpose programs, and community choice aggregator charges.
 - (B) Use the most cost-effective communications channels, which may include, but are not limited to, email, an online portal, or a mobile application, balanced with customer access needs.
- (b)(1) Consistent with paragraph (9) of subdivision (c) of Section 366.2 of the Public Utilities Code, the commission shall seek and consider input from community choice aggregators.
- (2) The commission may seek and consider input from utilities and other relevant stakeholders to inform its evaluation and identification and consideration of potential avenues to consolidate notices and enhance billing transparency.

ITEM 8 ATTACHMENT C







California & Nevada State Association of Electrical Workers



Environmental Defense Fund Concerned Scientists



CALIFORNIA ENVIRONMENTAL VOTERS



















































VOTE YES on SB 540 (Becker and Stern)

Regional energy market negotiations must continue

SB 540 reforms governance of regional energy markets run by CAISO to encourage utilities from around the West to join. Those reforms are urgently needed to prevent California from becoming isolated as more and more trading partners commit instead to a competing market run out of Arkansas. While recent amendments work against that purpose, the respective organizations above all agree on one thing: SB 540 must move forward, because we can't afford to wait any longer. Passing SB 540 off the floor sends a critical signal that California remains committed to getting this done.

Vote YES to move SB 540 off the floor to:

- Lower costs and increase reliability by solidifying partnerships. California relies on its neighbors for about 30% of its electricity, and even more in times of stress. Having reliable trading partners means more places to buy and sell clean energy at lower costs. Losing those partners would result in greater risk of blackouts, higher energy costs, and prolong our reliance on dirty forms of energy.
- Enable California to meet its clean energy goals the fastest, cheapest way possible. Meeting this challenge by 2045 requires a 400% increase in clean energy supplies to power our homes, vehicles, and businesses. While California generates more clean energy than ever, it has never wasted more. In 2024, California curtailed 3.4 million megawatt hours (MWh) of utility-scale wind and solar energy, a 29% increase from 2023. This is wasted potential and dollars that will only grow if we are not a part of an energy market where we can sell our excess energy supplies.
- Give this diverse and committed coalition time to get the policy right. While many
 of the stakeholders reflected in this coalition have serious concerns with the current bill
 language, we are committed to continue working on the policy to strike a balance that
 provides for reasonable legislative oversight without undermining the core tenet of
 independent governance. The stakes of doing nothing are simply too high.

VOTE YES on SB 540 to KEEP CRUCIAL NEGOTIATIONS GOING

ITEM 8 ATTACHMENT D















May 29, 2025

The Honorable Jesse Gabriel Chair, Assembly Budget Committee 1021 O St, Room 8230 Sacramento, CA 95814 The Honorable Scott Wiener Chair, Senate Budget & Fiscal Review Committee 1021 O St, Room 8620 Sacramento, CA 95814

Subject: Fund the California Energy Commission's (CEC) Distributed Electricity Backup Assets (DEBA) Program

Dear Assemblymember Gabriel and Senator Wiener,

We are writing to express our support for funding the Distributed Electricity Backup Assets (DEBA) program as part of budget negotiations. The DEBA program was previously included in the Governor's Budget. The program was intended to receive \$200 million dollars in 2025-26 and \$180 million dollars in 2026-27. However, the current May Revision proposal eliminates funding for the DEBA program, which we deem critical for achieving both ratepayer affordability and California's goals for a cleaner energy future.

Investments in DEBA are more important than ever due to rising electricity costs and the increasing threat of extreme weather events. According to the CPUC's Public Advocates Office, bundled electricity rates have increased between 82% to 110% in the last decade, placing a growing burden on households. At the same time, climate change is causing more frequent and intense weather events that can strain our power grid.

DEBA can help address these challenges by supporting the acquisition of additional clean customer resources that can be enrolled in virtual power plants (VPPs). California's Community Choice Aggregators are at the forefront of building VPPs, which rely on aggregated customer resources – like batteries and thermostats – that are critical to achieving the state's clean energy goals, reducing costs for ratepayers, supporting grid reliability & resilience, and advancing environmental justice through accessible clean energy. By enabling customers to participate in automated dispatch, VPPs can collectively provide capacity through demand reduction at peak hours when energy is most expensive, thereby benefiting all customers.

Investing in DEBA is an investment in a more reliable and affordable energy future for all Californians, which is well-aligned with the goals of the Cap-and-Invest Program. We respectfully urge that it be included as part of the final budget agreement and the Cap-and-Invest spending plan. If you have any questions, please contact Amy Costa, at amy@fullmoonstrategies.com.

Sincerely,

Patrick Welch

Associate Director of Legislative Affairs

San Diego Community Power

fatrick Welch

Marc Hershman

Director of Government Affairs

Peninsula Clean Energy

Vincent Wiraatmadja

Senior Legislative Manager

MCE

Greg Wade

Chief Executive Officer

Clean Energy Alliance

CC: Senator Benjamin Allen, Chair, Budget subcommittee 2

Assemblymember Steve Bennett, Chair, Budget subcommittee 4

Joe Stephenshaw, Department of Finance

Chase Hopkins, Office of Assembly Speaker Robert Rivas

Kip Lipper, Office of Senate pro Tempore Mike McGuire

Mitch Sears
Chief Executive

Chief Executive Officer Valley Clean Energy

Bena Chang

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Silicon Valley Clean Energy

Scott Green

Senior Government Affairs Manager

San Jose Clean Energy

Scott Green

ITEM 8 ATTACHMENT E

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LEGISLATIVE JEWISH CAUCUS CO-CHAIR

COMMITTEES

BUDGET & FISCAL REVIEW

JOINT LEGISLATIVE BUDGET

LEGISLATIVE ETHICS

HEALTH

JUDICIARY

LOCAL GOVERNMENT PUBLIC SAFETY

JOINT RULES

May 30, 2025

Alice Busching Reynolds, President California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102

Re: Self-Generation Incentive Program and Harm to Community Choice Aggregators Customers

Dear President Reynolds:

We write to request that the CPUC immediately review and approve the submitted CCA demand-response program advice letters for SGIP.

The 2023 Budget Act provided \$280 million for the program, and we are dismayed that, more than two years later, the CPUC has yet to approve allocation of the funds to communities throughout California. Now more than ever, at a time when ratepayers are facing increased costs and the status of other climate funds are uncertain, we expect state agencies to move with alacrity in getting funds out the door in an expedient, efficient, and equitable manner.

The Self-Generating Incentive Program (SGIP) is an essential program that provides financial rebates for energy storage systems and other distributed energy resources (DERs), that are vital to meet California's increasingly complex reliability, distribution and transmission, climate, and affordability needs. 1 Originally launched in 2001, SGIP is designed to serve residential and nonresidential customers statewide.

¹ Public Utilities Code section 379.6.

In 2018, the Legislature passed SB 700 (Wiener, Chapter 839, Statutes of 2018) which extended the SGIP program for five years through 2025. SB 700 continued savings for ratepayers across the state, from the installation of more than 2,000 MW of storage capacity in order to meet the state's increasing energy, replacing fossil fuels, and further enabling the deployment of variable renewable energy sources. The Legislature explicitly directed the CPUC to offer the program to all ratepayers, "The commission shall ensure that distributed generation resources are made available in the program for all ratepayers."

All California ratepayers pay into the SGIP program,³ and the Legislature intended all Californians to be eligible to benefit from the program.⁴ Unfortunately, the program's current implementation, especially as it relates to the 2023 Budget Act allocation, unfairly prevents many from participating. Specifically, the current implementation of SGIP impermissibly denies the nearly 1/3 of Californians served by CCAs access to the SGIP rebates that they help fund.⁵ We are concerned to hear from our constituents that, in addition to denying CCA customers beneficial rebate access, the current implementation of SGIP also unjustifiably imposes cost increases on CCA customers in an increasingly challenging energy affordability crisis.⁶

The CPUC must act immediately to allow pathways for CCA customers to access SGIP and prevent further financial harm to current and former CCA customers. The Commission has the authority under current law and the responsibility to update its implementation of the "qualified demand response program" enrollment requirements.⁷

Qualified Demand Response Program Enrollment Requirement

To better support SGIP's programmatic goals, the Legislature directed the Commission to consider requiring SGIP participants to enroll in a, "demand response program or a peak load reduction program offered through the customer's load-serving entity[.]" The law does not require participation in demand response programs, but rather that the CPUC must *consider*

² Senate Bill 700 (2018), section (i).

³ Funding sources include ratepayer funds, greenhouse gas reduction funds and in some cases general funds appropriated by the Legislature.

⁴ Assembly Bill 209 (2022), Section 25, "It is the further intent of the Legislature that the commission, in future proceedings, provide for an equitable distribution of the costs and benefits of the program."

⁵ CalCCA, California Aggregator, 2024, p. 4, available at: https://cal-cca.org/wp-content/uploads/2024/01/California-Aggregator-Winter-2024-Newsletter.pdf?utm_source=chatgpt.com ("CCAs are procuring energy resources for over 14 million customers in California, about one-third of the state's population.").

⁶ CPUC, 2024 Senate Bill 695 Report, pp. 1-3 available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2024/2024-sb-695-report.pdf.

⁷ CPUC, Decision (D.)24-03-071, pp. 3, 75-76.

⁸ Public Utilities Code section 379.10 (b).

participation in demand response programs <u>or</u> in peak load reduction programs. The Legislature appropriated \$280 million in greenhouse gas reduction funds, and extended the collection of ratepayer funds for the program.⁹

Subsequently, the Commission issued two key decisions to disburse funds and update implementation of the SGIP program. In Decision (D.) 23-12-005 the CPUC created a definition of a "qualified demand response program" and outlined an advice letter process to add programs. In D.24-03-071 three months later, the Commission revised its previous decision and added a new list of qualified demand response programs exclusively for SGIP. ¹⁰ In addition to creating confusion and unnecessary complexity for customers and program administrators, the latter decision only qualifies a handful of investor-owned utility (IOU) programs. These programs are unavailable to residential CCA customers. No CCA customer may self-enroll in any of these qualified demand response programs in order to access SGIP. ¹¹ Consequently, no CCA customer has accessed SGIP rebates since the implementation of this decision statewide. We are disheartened to learn that despite significant CCA, developer, and customer engagement ¹² with the Commission on this issue, no solution has been offered to CCA customers.

Harms to CCA Customers

Due to the CPUC's implementation of SGIP qualified demand response program requirements, CCA residential customers, unlike IOU customers, cannot access their share of the \$280M in SGIP incentives approved by the Legislature in the 2023-24 budget when they become available on May 20th. This is in spite of the fact that CCA residential customers pay into the program.

The CPUC's implementation of SGIP qualified demand response program requirements harm CCA customers in several ways. Many CCA customers, after being directed by SGIP project developers or interpreting vague program rules themselves, opted out of CCA service in order to access SGIP. Customers who opt out of CCA service are placed on a 6 month transitional rate that is extremely volatile and prohibits enrollment in IOU administered SGIP qualified demand response programs. ¹³ Several of these customers experienced higher energy bills and lost access

⁹ Assembly Bill 209 (2022); Assembly Bill 102 (2023); CARB, California Climate Investments, available at: https://ww2.arb.ca.gov/our-work/programs/californiaclimate-investments/about. ¹⁰ D.24-03-071, Appendix E.

¹¹ Pacific Gas & Electric filed an advice letter to update its CBP program so unbundled customers may enroll and access SGIP. The Commission has failed to issue a timely disposition on the advice letter. PG&E AL 7548-E (December 2024).

¹² CCAs raised this issue with the Commission several times in written submissions, meetings, and by providing supplemental information on numerous occasions. Multiple CCAs have also submitted their own programs to be added to the qualified demand response programs list for SGIP and none have received an approval disposition as of this date.

¹³ IOU generation rates are presently higher than many CCA generation rates.

to CCA bill discounts and other beneficial programs. Customers have been charged as much as 4 times their previous energy bills. Many of these customers were unaware they would be unable to enroll in a qualified demand response program for 6 months and are now at risk of missing the opportunity to enroll in the program before SGIP sunsets in 2026. Customers who find themselves stuck in this situation are not permitted to return to CCA service for a full year. As a result, customers are now experiencing significantly higher bills, unable to access SGIP, and unable to choose their preferred load-serving entity. Low-income customers, who are able to stack SGIP rebates with other programs such as the Transformative Climate Communities funds, are particularly hit hard by these delays which in turn further frustrates the implementation of other climate funds.

The Solution

We are concerned to hear that the CPUC's actions and implementation of these funds is resulting in inequitable outcomes and raising costs for CCA customers. This is not our intent. We request that Energy Division staff efficiently and effectively review CCA demand response program advice letters no later than 30 days following their protest period.¹⁴

Thank you for your consideration of our concerns and your attention to this important matter. Please feel free to reach out to me with any questions, or if your staff have questions, please do not hesitate to contact Radhika Gawde in my office at Radhika.gawde@sen.ca.gov or 916-651-4011.

Sincerely,

Scott Wiener

Senator, 11th District

Scott Wiener

Monique Limon

Senator, 21st District

Aisha Wahab

Senator, 10th District

Lisha Wahab

¹⁴ Equivalent to 50 days following the submission of an advice letter.

Jesse Arreguín Senator, 7th District

Jesse Augu

Stell Padell

Stephen Padilla Senator, 18th District

Jacqui V 1

Jacqui Irwin

Assembly Member, 42nd District

John Harabedian

Assembly Member, 41st District

John Haulest.

Darshana Patel

Assembly Member, 41st District

2 WS

Chris Ward

Assembly Member, 78th District

Ben Allen

Ben Allen

Senator, 24th District

Jerry McNerney

Senator, 5^{th} District

Rhodesia Ransom

Assembly Member, 13th District

Tasha Boerner

Assembly Member, 77th District

Steve Bennatt

Steve Bennett

Assembly Member, 38th District

Josh Becker

Senator, 13th District

Diane Papan

Assembly Member, 21st District

1-M. Wh

Damon Connolly Assembly Member, 12th District

Buffy Wicks

Assembly Member, 14th District

CC:

Leuwam Tesfai, Director, Energy Division, CPUC Matt Baker, Commissioner, CPUC Karen Douglas, Commissioner, CPUC Darcie L. Houck, Commissioner, CPUC John Reynolds, Commissioner, CPUC

ITEM 8 ATTACHMENT F

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 M) to Revise its 2024-2031 Energy Efficiency Rolling Portfolio Business Plan

A.25-04-014

PROTEST OF SAN DIEGO REGIONAL ENERGY NETWORK, BAY AREA REGIONAL ENERGY NETWORK, TRI-COUNTY REGIONAL ENERGY NETWORK, INLAND REGIONAL ENERGY NETWORK, NORTHERN RURAL ENERGY NETWORK, AND THE CITY OF SAN DIEGO TO THE APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY

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Counsel for:

ASSOCIATION OF BAY AREA GOVERNMENTS,

for the Bay Area Regional Energy Network (BayREN) program

COUNTY OF VENTURA, for the Tri-County

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May 29, 2025

Representative for the City of San Diego

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SUMMARY OF RECOMMENDATIONS

The Joint Parties respectfully requests that the Commission¹ evaluate the broad questions of law and policy embedded in SDG&E's request to cease administering regional energy efficiency programming in a rulemaking venue in which all IOU and non-IOU PAs are respondents. Should the resolution of threshold questions confirm SDG&E could be permitted to withdraw under the current statutory framework, the Commission should order SDG&E to resubmit its Application with additional detail provided. The Commission should evaluate the Application on a non-expedited basis to allow for the time and processes needed to determine whether, under SDG&E's proposal, there will remain sufficient EE programming coverage in SDG&E's territory.

-

All acronyms and defined terms used in the Summary of Recommendations are defined in the body of this Protest.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 M) to Revise its 2024-2031 Energy Efficiency Rolling Portfolio Business Plan

A.25-04-014

PROTEST OF SAN DIEGO REGIONAL ENERGY NETWORK, BAY AREA REGIONAL ENERGY NETWORK, TRI-COUNTY REGIONAL ENERGY NETWORK, INLAND REGIONAL ENERGY NETWORK, NORTHERN RURAL ENERGY NETWORK, AND THE CITY OF SAN DIEGO TO THE APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY

In accordance with Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), San Diego Community Power ("SDCP") on behalf of the San Diego Regional Energy Network ("SDREN"); the Association of Bay Area Governments on behalf of the Bay Area Regional Network ("BayREN") program; the County of Ventura on behalf of the Tri-County Regional Energy Network ("3C-REN") program; Western Riverside Council of Governments ("WRCOG") on behalf of the Inland Regional Energy Network ("I-REN"); Redwood Coast Energy Authority ("RCEA") on behalf of the Northern Rural Energy Network ("NREN"); and the City of San Diego (together, the "Joint Parties")² hereby submit this protest to the *Application of San Diego Gas & Electric Company (U 902 M) to Revise its 2024-2031 Energy Efficiency Rolling Portfolio Business Plan* ("Application").³ In accordance with Rule 2.6 and the noticing of this Application on the Commission's Daily Calendar on April 29, 2025, this Protest is timely filed.

Through its Application, San Diego Gas & Electric Company ("SDG&E") seeks Commission approval to discontinue regional energy efficiency ("EE") program administration,

Each of the Joint Parties respectfully requests individual party status.

Application ("A.") 25-04-014, Application of San Diego Gas & Electric Company (U 902 M) to Revise its 2024-2031 Energy Efficiency Rolling Portfolio Business Plan (Apr. 25, 2025).

except for its Codes and Standards ("C&S") program. While the Application presents a unique opportunity to re-envision the Commission's market-rate EE portfolio administrative model and how to more effectively meet the state's climate and energy goals, it also presents significant questions of law and policy that the Commission has not previously addressed. Most notably, there is no precedent to guide the Commission's evaluation as to whether an investor-owned utility ("IOU") can withdraw from EE portfolio administration, or what an IOU portfolio administrator ("PA") must demonstrate in such an application. Likewise, granting SDG&E's request will have novel implications on its existing obligations under its Commission-approved procurement plan.

The Commission must first consider the threshold legal questions and broad policy implications that the Application raises before it can fully consider the SDG&E Application and any potential alternatives to the proposal. Evaluation and resolution of these issues will impact all IOU EE PAs, as well as the regional energy networks ("RENs") in their service territories. As such, the Joint Parties respectfully request that the Commission refrain from taking up SDG&E's Application until it can resolve these broader questions in the recently opened EE Rulemaking proceeding⁴ ("EE OIR") in which all PAs are named respondents.

I. JOINT PARTIES' INTERESTS

The least expensive kWh is the one that is never used. This is an important underpinning of the loading order that was established in 2007 as a result of the passage of Assembly Bill ("AB") 57 and serves as the cornerstone of the state's climate and energy goals. This is just one of several factors that have contributed to California's national leadership in the EE space.

-

⁴ Rulemaking ("R.") 25-04-010.

California has scored #1 in the American Council for an Energy-Efficient Economy's ("ACEEE") *State Energy Efficiency Scorecard* seven times,⁵ including 2025, since the report's inception in 2007. Various sub-categories contribute to the overall ranking, including "utility and public benefits programs and policies." In this subcategory, California was also #1 in the nation. The 2025 Scorecard states, "[Energy efficiency] benefits have been most pronounced where states and utilities have invested in energy efficiency as a resource by factoring efficiency as an integral part of utility energy resource planning and decision making in much the same way as resources such as power plants, wind turbines, and solar panels. In particular, states that have adopted an energy efficiency resource standard (EERS), establishing tangible multiyear utility savings goals, have been most successful in delivering the vast majority of utility-sector savings nationwide." California has embraced both practices.

In reaching this level of national leadership in the EE space, the California legislature and the Commission have invested significant time and resources into formulating the deep-rooted policies that have spurred EE growth in the state. Due to the broad reach of these policies, major shifts in the EE landscape will necessarily impact many of the entities working to effectuate the Commission's EE goals.

A. SDREN's Interests

Authorized by the Commission in Decision 24-08-003,⁶ SDREN is a collaboration between SDCP⁷ and the County of San Diego, created to be a driving force for communities in the region

American Council for an Energy-Efficient Economy, 2007-2010, 2020-2022, 2025 State Energy Efficiency Scorecards. Accessible at: aceee.org.

See generally, Decision ("D.") 24-08-003 (Aug. 1, 2024).

SDCP is a Community Choice Aggregator ("CCA") serving the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego, as well as the unincorporated areas of San Diego County that receive SDG&E transmission and distribution service. SDCP is a load serving entity ("LSE"), and its customers are categorized as unbundled customers.

to adopt clean, reliable energy through community-driven solutions that contribute to local and state energy efficiency and climate goals. SDREN's portfolio of ten programs is designed to complement SDG&E's offerings and will start launching in late 2025. These programs span public, residential, commercial, and cross-cutting sectors.⁸ At a fundamental level, SDREN's priority is programming that best meets the needs of San Diegans across the region's 18 incorporated cities, 47 school districts, 18 recognized Tribal communities, and unincorporated areas. In keeping with its core values, SDREN will integrate a collaborative and purposeful investment in the region's underserved and hard-to-reach communities to contribute to an equitable transition to a clean energy economy.

SDG&E's Application directly impacts these interests through its argument that in its absence, SDREN and statewide programs will provide adequate coverage for SDG&E's service territory. Indeed, as noted in subsequent sections, SDREN's footprint does not align completely with SDG&E's service area. Aside from the question of geographical coverage, it is possible that relying on a REN to provide coverage intended to be provided by IOUs is inconsistent with the Commission's stated purpose of REN programs. The Commission authorized the first two RENs as pilots in 2012,9 and subsequently recognized that local governments are well positioned to *fill gaps* in service left by IOU PA, elect-to-administer PA, and apply-to-administer PA portfolios. ¹⁰

SDG&E's assertion must also be considered within the context of Commission-established criteria that local governments must meet to qualify as a REN. These criteria reflect the intended purpose of RENs and define the unique role they play in the market-rate EE landscape:

R.13-11-005, Motion of San Diego Community Power on Behalf of the San Diego Regional Energy Network for Approval of Energy Efficiency Portfolio Application, Exhibit 1, p. 3 (Jan. 5, 2024).

D.12-11-015, p. 2 (Nov. 15, 2012).

D.19-12-021, p. 18 (Dec. 12, 2019).

- 1) "Activities that utilities or CCA program administrators cannot or do not intend to undertake;
- 2) Pilot activities where there is no current utility or CCA program offering, and where there is potential for scalability to a broader geographic reach, if successful.
- 3) Activities serving hard-to-reach markets (HTR), whether or not there is another utility or CCA program that may overlap.¹¹"

Importantly, these criteria were not developed within the context of an IOU ceasing to serve as a PA. In fact, the Commission has explained that "[T]he criteria above were designed to allow the REN programs to operate as supplemental to and in conjunction with the existing utility energy efficiency portfolios." Additionally, cost-effectiveness requirements inadvertently made it difficult for IOU PAs to serve hard-to-reach communities. RENs are intended to fill gaps, which inherently assumes other PA types are also serving the region. 13

Notwithstanding, SDREN's ultimate priority is best serving San Diegans and maximizing affordability. SDREN is open to exploring pathways that promote innovative, nimble, and effective adoption of technology and services. While RENs are neither authorized nor intended to "take on," "adopt," or "absorb" programs administered by another PA, if the Commission ultimately determines it is legally permissible to grant SDG&E's request, SDREN would theoretically need to issue a market assessment to re-assess the region's needs and design new programs to appropriately meet those needs. However, the Commission must first address the important threshold questions identified herein *before* any such assessment can be made.

B. City of San Diego's Interests

The City of San Diego is one of the largest users of electricity and distribution resources in SDG&E's territory, with approximately 3,500 electric accounts across every rate class and a

¹¹ *Id.* at 32.

¹² *Id.* at 5.

¹³ *Id.* at 37.

wide variety of service schedules. The City values EE as a solution to help achieve its ambitious decarbonization goals. The City and its constituents have benefitted from SDG&E's EE programming over the years, and the City's ultimate interest is ensuring continuity of programming for municipal operations and its constituents. The City was a party to the original Rulemaking, R.13-11-005, that ultimately led to the creation of SDREN and is excited for the launch of new SDREN programs to complement the SDG&E portfolio. The City supports a deliberate and transparent process to ensure there are no unintended and inadvertently deleterious consequences that could arise as a result of SDG&E's Application to withdraw from EE administration starting in 2026. Local programs tailored to regional needs remain critical to achieving the City's Climate Action Plan targets, reducing utility burdens on customers, and advancing decarbonization efforts across the built environment.

C. BayREN, I-REN, 3C-REN, and NREN's Interests

NREN's service territory encompasses a broad and predominantly rural expanse that includes Alpine, Amador, Butte, Calaveras, El Dorado, Humboldt, Lake, Lassen, Mariposa, Mendocino, Nevada, Placer, Plumas, Sierra, Sutter, Tuolumne, and Yuba counties—areas that lie within Pacific Gas and Electric Company's ("PG&E") service area. These communities are home to a majority of hard-to-reach, underserved, low-income, and tribal populations. In alignment with the Commission's longstanding recognition of the unique role of RENs, NREN was established to fill gaps where existing program administrators—due to scale, geography, or cost-effectiveness constraints—have historically been unable to deliver services. The NREN portfolio provides a comprehensive suite of EE services across the residential, commercial, and public sectors, including education and outreach, technical assistance, project incentives, financing, workforce development, and codes and standards support. These offerings are specifically tailored to meet the distinct needs of the region's underserved populations. NREN is concerned about the

Application's impact on relationships between IOUs and RENs in delivering EE programs and does not support any redefinition of the REN role in the absence of IOUs operating regional EE programs.

BayREN serves customers in the nine-county Bay Area region, a region that serves nearly 8 million residents, incorporates urban, suburban and rural populations and operates solely within PG&E's service area. BayREN administers regional, equity-based and equity focused programs within the resource acquisition and market support segments as well as one statewide program. BayREN's programs include, among others, its C&S program—improving C&S compliance at the local government level and supporting local governments in implementing reach codes—and its award-winning multifamily program which serves a notoriously hard-to-reach sector.

3C-REN serves customers in the Counties of San Luis Obispo, Santa Barbara, and Ventura; 3C-REN's customers receive utility service from PG&E, Southern California Edison Company ("SCE"), and Southern California Gas Company ("SoCalGas"). 3C-REN serves regional needs that were previously not met given the overlapping service territories of the IOUs in its region.

I-REN serves customers in the counties of Riverside and San Bernardino (together, the Inland Empire)—a vast territory that includes large rural areas with underserved, low income, and tribal populations. The I-REN EE portfolio includes interrelated programs serving local public agencies through technical assistance, public facility upgrade incentives, codes and standards compliance support, and workforce initiatives to provide job opportunities that build capacity at local agencies to undertake EE planning and retrofit projects. I-REN also offers training opportunities to building professionals to increase understanding of code-compliant EE equipment installation, and workforce development efforts to encourage high-road EE career awareness in a region that does not have sufficient trained workforce to meet local needs. Across all these efforts,

I-REN coordinates with the IOUs in its territory and views them as partners, referring customers to their programs to help meet customer needs, as well as partnering with them to offer energy code compliance trainings and EE workforce development events.

Together, the Joint Parties have an interest in this proceeding due to the statewide implications this Application would have: its monetary and non-monetary impacts on ratepayers; its impact on climate change and the environment; and its impact on the health of the energy efficiency ecosystem in California. California has established goals for carbon neutrality, renewable energy, heat pump installation, and others, but to achieve those goals, it's necessary to have boots on the ground. That includes a trained workforce (including through the Commission's Market Support programs); programs and incentives to ensure the appliances that save money and energy actually are installed (Resource Acquisition programs); a focus on opportunities to increase the health and safety of ratepayers, particularly California's most vulnerable populations, including by reducing indoor air temperature and improving indoor air quality (Equity programs); and local governments that must work to support successful implementation of – and compliance with – the state's codes and standards, air district zero emission compliance standards, and local government reach codes. As communities are growing, Californians in underserved, disadvantaged, and hardto-reach regions need more support from EE PAs. An abrupt unraveling of one element of the EE ecosystem, as proposed by the Application, will have impacts on other IOUs in considering doing the same, as well as others in the ecosystem. An IOU's departure does not change state and local goals, nor can the Commission assume that "the market" will somehow step in to ensure equity or solutions to the climate crisis.

Finally, it is important to consider factors contributing to SDG&E's Application that may influence other IOUs to take similar actions. For example, in Decision 20-11-013, the Commission

put a moratorium on IOU shareholder incentives for EE performance. This is just one of many changes in the portfolio framework that may be a contributing factor to SDG&E's decision to propose withdrawal and could serve as motivation to the other IOU PAs. This is not mentioned in the SDG&E Application, which instead justifies its proposal to withdraw based on cost-effectiveness trends, which are discussed in subsequent sections.

II. GROUNDS FOR PROTEST

A. SDG&E's Application Implicates Broad Issues of Law and Policy That Should Be Examined in the New EE OIR.

The legal, policy, and operational issues inherent within SDG&E's Application will not just impact SDREN, but all EE PAs more broadly. Indeed, the Application introduces questions that could fundamentally change the rules and roles the Commission has assigned to IOU and non-IOU PAs over the years. The broad applicability of these questions and the impact their resolution will have on other PAs across California underscores the need to address these issues in a non-expedited proceeding in which all IOU and non-IOU PAs are respondents. As many of the topics raised in SDG&E's Application are already slated for consideration in the EE OIR, the Commission should refrain from evaluating the merits of SDG&E's specific proposal until it can resolve the broader threshold issues in the EE OIR.

1. It is Not Clear Whether California Law Allows SDG&E to Withdraw from Energy Efficiency Program Administration.

SDG&E's request to withdraw as a regional PA would set in motion a major shift that requires additional scrutiny of IOU obligations under California law and Commission policy. For instance, California Public Utilities Code § 454.5(b)(9)(C)(i)¹⁴ requires an IOU's approved

Joint Parties' Protest of SDG&E Application

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All subsequent statutory references are to the California Public Utilities Code, unless indicated otherwise.

procurement plan to demonstrate that it will first meet unmet resource needs through all available EE and demand response resources that are cost effective, reliable, and feasible. This requirement was subsequently implemented through Commission decisions establishing a "loading order" for resource procurement. In addition, Section 454.55(a)(1) requires the Commission, along with the California Energy Commission, to identify all potentially achievable cost-effective electricity efficiency savings and establish efficiency targets for the IOUs to achieve. This process is accomplished through the Potential and Goals Study ("P&G Study") process. In

Consistent with these requirements, D.07-10-032 required the IOUs to create long-term EE strategic plans¹⁷ which were adopted in D.08-09-040 and included SDG&E as a PA.¹⁸ In D.21-05-031, the Commission revised the EE Portfolio Application process and ordered all EE PAs to file applications by February of 2022 to cover a four-year program portfolio beginning in 2024 and eight-year business plan extending to 2031.¹⁹ In D.23-06-055, the Commission reaffirmed SDG&E's role as a PA and approved SDG&E's 2024-2027 Portfolio Plan and its 2024 – 2031 Business Plan.²⁰

To date, there is no precedent indicating whether or how an IOU PA could withdraw from administrator status. Resolution of these questions will require thorough Commission evaluation of whether an IOU can comply with the statutory requirement to first meet unmet resource needs with cost-effective, reliable, and feasible EE resources, as well as the Commission's loading order and SDG&E's approved procurement plan. These issues implicate all IOU PAs, warranting more

See, e.g., D.07-12-052, p. 12 (Dec. 20, 2007). Note that the loading order is an ongoing obligation (see D.12-01-033).

The current 2025 P&G Study process is currently underway in R.25-04-010.

D.07-10-032, p. 2, Ordering Paragraphs ("OPs") 1 and 4 (Oct. 18, 2007).

D.08-09-040, OPs 1 and 2 (Sept. 18, 2008).

D.21-05-031, OP 5 (May 20, 2021).

D.23-06-055, OP 1.

thorough consideration in a proceeding in which all PAs will be participating – as opposed to a separate Application proceeding where parties would need to move for party status in order to provide input. This would risk an insular treatment of the issues raised in the Application, despite the Application raising questions of statewide impact and import.

2. SDG&E's Withdrawal as an EE PA Will Impact Larger Issues Associated with Procurement Planning, Statewide EE Goals, and Customer Rates.

Beyond the threshold question of whether SDG&E can withdraw as an EE PA, its Application raises issues of broad applicability associated with Commission and legislative mandates. For example, Section 399.15 governs the Renewables Portfolio Standard ("RPS"). Failure to achieve the EE targets established by the Commission's Potential and Goals Study would allow load to grow unchecked, increasing the absolute amount of renewable energy required to meet the RPS – even if the percentage target remains unchanged. This scenario risks exposing IOUs and all LSEs to RPS compliance penalties.

Moreover, as statewide load growth continues, even modest EE savings remain essential to alleviating grid constraints, reducing Resource Adequacy requirements, and enhancing system reliability.²¹ Recognizing these contributions is consistent with the Legislature's direction under Senate Bills 100²² and 350²³ and Assembly Bill 3232,²⁴ which collectively identify EE as a core pillar of the state's long-term decarbonization and reliability strategies.

Frick, N.M., Carvallo, J.P., and Schwartz, L., *Quantifying grid reliability and resilience impacts of energy efficiency: Examples and Opportunities*, LBNL Technical Brief, December 2021.

Increases RPS mandate to 60% by 2030 and requires renewable and zero carbon resources to supply 100% of retail sales. Energy efficiency is important as a measure to mitigate the need for fossil fuels to supplement renewables as California's load increases

Requires a doubling of energy efficiency by 2030.

Directs the CEC to "assess the potential...to reduce the emissions of greenhouse gases in...residential and commercial building stock by at least 40% below 1990 levels by January 1, 2030."

California's adopted energy planning framework, as codified in Public Resources Code Sections 25310 and 25305, also recognizes EE savings and the California Energy Demand ("CED") forecast as foundational inputs for evaluating future system needs. These elements are central to ensuring resource planning efforts remain aligned with the state's climate, reliability, and affordability objectives.

Finally, the Commission should review SDG&E's Application in a manner consistent with longstanding precedent interpreting utility obligations under Section 451, which requires just and reasonable rates—necessarily including cost-effective EE—and adequate service for customers, taking into consideration their health, safety and comfort. Any change in administrative roles must preserve, rather than diminish, the statutory responsibility of utilities to provide safe, reliable, and just and reasonable service. Consideration of these obligations—particularly as they relate to the role of EE in the state's preferred loading order—should proceed transparently and be integrated into the broader issues currently scoped into the EE OIR. Resolving these issues in isolation through a stand-alone application risks generating outcomes that are incomplete or misaligned with established Commission frameworks.

В. Much of SDG&E's Application Overlaps with Topics Already Slated for Consideration in the EE OIR.

Many of the issues raised in SDG&E's Application are substantively similar to those scoped into the EE OIR. In particular, the Commission's Order Instituting Rulemaking ("OIR") indicates that the Commission will evaluate cost-effectiveness policy, deliberation of program and portfolio interactions between various administrator types, energy efficiency potential and goals, changes to statewide program implementation and policy, and more.²⁵ Opening comments filed on

²⁵ R.25-04-010, Order Instituting Rulemaking, pp. 3-8 (Apr. 29, 2025).

the OIR indicate strong interest from parties to conduct a deeper evaluation of cost-effectiveness policy and approaches that will improve the portfolio's efficacy.²⁶

SDG&E's Application gives rise to systemic issues of cost-effectiveness – which is currently narrowly defined by the Commission²⁷ – common to other IOU PA portfolios. This is affirmed by the recent State Audit²⁸ that identified a generally decreasing cost-effectiveness trend amongst IOU EE programs.²⁹ The State Audit highlights areas for improvement with regard to Commission oversight and highlights previous evaluations that provided guidance to IOUs on increasing the cost-effectiveness of their portfolios.³⁰ Notably, the State Audit is of particular importance within the context of the new EE OIR, which specifically references the State Audit in defining the scope of the planned cost-effectiveness discussion therein.³¹

SDG&E's assertion that its regional programs should be eliminated due to poor cost-effectiveness fails to acknowledge that the underlying challenges are not unique to SDG&E, but rather symptomatic of broader issues affecting all IOU portfolios. To reiterate, the State Audit indicates that poor cost-effectiveness is a general trend within each IOU's portfolio—and among a small number of programs sampled-that warrants remediation and directs the Commission to address these shortfalls.³² This trend is ostensibly a function of market maturity; as 'low-hanging fruit' is exhausted, remaining opportunities for savings are more expensive to capture. The

R.25-04-010, Opening Comments of The Utility Reform Network, p. 3 (May 19, 2025); R.25-04-010, Opening Comments of SoCalREN, pp. 2-3 (May 19, 2025).

For a discussion of this issue, see, R. 22-11-013, Comments of BayREN and 3C-REN on Avoided Cost Calculator Guiding Principles (May 12, 2025).

California State Auditor Report 2023-127, issued March 2025.

A.25-04-014, Prepared Direct Testimony of Hollie Bierman, pp. HB-3 – HB-5 (Apr. 2025).

California State Auditor, "The California Public Utilities Commission – Without Improving its Oversight, the Benefits of Energy Efficiency Programs May Not be Worth Their Cost to Ratepayers, pp. 25-34 (Mar. 2025). Available at: https://www.auditor.ca.gov/wp-content/uploads/2025/03/2023-127-Report.pdf.

Order Instituting Rulemaking at 5.

At page 14 and 20 of California State Auditor Report 2023-127, issued March 2025.

Commission acknowledged this dynamic as early as 2008,³³ reiterated it in 2015³⁴ and again in 2021.³⁵ In opening comments on the OIR, several parties urge the Commission to prioritize cost-effectiveness policy specifically.

Further analysis of cost-effectiveness scores is also warranted across all IOUs' energy efficiency portfolios because the Audit draws conclusions based on a time period inclusive of the COVID years when PAs faced extraordinary challenges in delivering in-person services, therefore limiting their ability to achieve energy savings. SDREN recommends normalizing audit data to account for these pandemic-related impacts, including any lingering spillover effects that may have continued to affect portfolio performance. Additionally, data from 2017–2019 poses challenges due to inflated savings from the Upstream Lighting Program, the analytic limitations of both pre-2020 and pandemic-era data underscore the need for closer scrutiny and broader deliberation in the EE proceeding.

Accordingly, the Joint RENs'³⁶ EE OIR opening comments recommended adding systemic cost-effectiveness (among other issues) to the scope of the rulemaking:

"Systemic Cost-Effectiveness Evaluation

 How the Commission should address system-wide portfolio cost-effectiveness challenges, including those identified in the 2025 State Audit, before acting on utility specific administrative proposals;

D.08-10-037, p. 84 and FOF 3

D.15-10-028, p. 2.

Guidehouse, 2021 Energy Efficiency Top-Down Potential Prototype Analysis, prepared for the California Public Utilities Commission, p. 76 (Jan. 18, 2022). Accessible at: https://www.cpuc.ca.gov/media/cpuc-website/divisions/energy-division/documents/energy-efficiency/cpuc-top-down-potential-final-2022-1-18.pdf.

The Joint RENs include BayREN, 3C-REN, Central California Rural Regional Energy Network, NREN, I-REN, and SDREN.

• How reforming the EE administrative model itself could improve portfolio performance, cost-effectiveness, and customer outcomes."³⁷

In summary, cost-effectiveness issues are not unique to SDG&E and should not be treated separately from the Commission's deliberations on cost-effectiveness in the rulemaking. Given these broadly applicable and outstanding issues, it is prudent to consider remediation interventions and other ways to improve cost-effectiveness prior to resolving a specific IOU's request to withdraw due to poor portfolio cost-effectiveness.³⁸

Finally, in addition to cost-effectiveness, parties have called for broader reforms to enhance administrative efficiency and strengthen portfolio performance, both of which are essential to achieving meaningful cost containment. These EE-specific trends and potential solutions merit deeper examination in the EE OIR, where all PAs are respondents, and the Commission is positioned to undertake comprehensive reform.

C. SDG&E's Application Lacks Sufficient Factual Support and Rests on Several Key Mischaracterizations.

Beyond implicating issues of broader applicability that are more appropriately addressed in the EE OIR, the Commission should not grant the Application as it lacks necessary details and relies upon several material mischaracterizations. If the Commission determines through the EE OIR that it is legally permissible for an IOU to withdraw from administering EE programs, then the Commission should also utilize that proceeding to determine the specific details that must be included in such an application. Thereafter, the Commission should require SDG&E to resubmit its Application according to that guidance.

Joint Regional Energy Network Comments on Order Instituting Rulemaking at 5-6.

See Bierman Direct at HB-3 – HB-5.

1. SDG&E Mischaracterizes the Extent of the Cost Savings Associated with its Application and Improperly Speculates as to SDREN Impacts on Savings.

SDG&E argues throughout its Application and supporting testimony that closing its regional EE programs will yield approximately \$300 million in savings for ratepayers over a six-year period (2026-2031).³⁹ This claim is misleading in several respects, including the fact that some portion of these costs may be required to support programs designed to maintain continuity of service and ongoing delivery of EE offerings should SDG&E be allowed to withdraw.

To that end, the Application appears to define savings as a simple subtraction of program budgets, without accounting for the value of the foregone Total System Benefits ("TSB"), which are the long-run avoided costs that EE programs deliver. TSB is designed to more holistically capture the benefits of EE—like reduced grid strain, and greenhouse gas emissions reductions. Decision 21-09-037 established TSB as the primary metric by which to quantify portfolio benefits; therefore, it is important for the Commission to temper SDG&E's claimed savings with TSB data, considering the losses in monetized benefits that the Application will implicate.⁴⁰ In short, TSB must be considered because it provides stakeholders and decisionmakers a sense of scale, impact, and benefits at the macroscale – information that is not apparent with cost-effectiveness scores alone. Similarly, the Application does not account for the avoided costs (e.g., transmission and distribution, generation, etc.) that will no longer be avoided if SDG&E's portfolio ceases to exist. Ultimately, SDG&E's asserted savings only materialize if it's assumed that there are currently zero benefits to the grid and ratepayers from its EE program expenditures.

It is important to note that any program currently achieving more than a 1.0 Total Resource Cost ("TRC") ratio that is eliminated will result in additional costs to ratepayers, and any program

Application at 9.

A.25-04-014, *Prepared Direct Testimony of Hollie Bierman*, Table HB-3 on p. HB-10 (Apr. 2025).

achieving less than a 1.0 TRC will only result in partial savings based on how near or far it is from the 1.0 ratio. Thus, even if TRC is used as the primary measure of cost-effectiveness, which is not the intention according to the Commission's Standard Practice Manual,⁴¹ the actual customer savings from eliminating EE programs would be just a fraction of \$300 million. Any program achieving a TRC greater than 1.0 that is eliminated will result in net cost increases to ratepayers, and even sub-1.0 programs may deliver critical non-energy benefits (e.g., local economic development, reduced energy burden, health, safety, and resilience) not captured by the TRC. Additionally, the TRC only accounts for utility avoided costs, not the benefits and costs of the customer.⁴² SDG&E's portfolio generates monetized TSB, and its Application demonstrates that the proposed withdrawal would leave behind unaccounted benefits.⁴³

The systemic concerns described in prior sections are driven, at least in part, by methodological constraints in current cost-effectiveness tools like the TRC test and the Avoided Cost Calculator ("ACC") itself – constraints which help explain why SDG&E's estimated cost savings are inaccurate. The ACC fails to account for localized costs and non-energy benefits, especially in underserved communities, leading to skewed assessments of portfolio value.⁴⁴ The ACC also omits key avoided costs like methane leakage, particulate pollution, and those borne by ratepayers, all of which are real but uncounted benefits of demand-side investments.^{45,46} As such,

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See Standard Practice Manual, p. 6.

R.22-11-013, Comments of Association of Bay Area Governments and County of Ventura on Administrative Law Judge Ruling, pp. 24-25.

Bierman Direct at HB-10, Table HB-3.

⁴⁴ R. 22-11-013, Comments of BayREN and 3C-REN on Avoided Cost Calculator Guiding Principles (May 12, 2025).

⁴⁵ *Id*.

Energy efficiency further yields significant benefit to the ratepayers, reflected in ongoing Commission and statewide discussions regarding non-energy impacts (NEIs) and non-energy benefits (NEBs) as well as in Draft Resolution E-5351 reflecting key metrics and indicators of EE programs.

SDG&E's cited TRC-based cost-effectiveness results are the product of an outdated framework under review,⁴⁷ not a failure specific to any single IOU.

Finally, SDG&E's suggestion that new SDREN programs could offset its program closures is speculative and conflicts with D.19-12-021, which clarifies that RENs are intended to operate as supplemental to, not substitutes for, IOU portfolios. All things considered, any claims of ratepayer savings associated with the potential exit of an IOU from program administration warrant rigorous scrutiny.

2. SDG&E's Application Asserts That Certain Programs Overlap with SDREN But Does Not Detail Mitigation Measures in Place.

SDG&E's Application indicates its intention to sunset programs that overlap with SDREN offerings and cost customers more than the value they provide.⁴⁸ However, SDG&E's claim that programs are redundant lacks detailed discussion, evidentiary support, and important context.

The Commission requires EE PAs with overlapping service areas to submit a joint cooperation memorandum ("JCM") to coordinate program activities.⁴⁹ Specifically, the Commission stated:⁵⁰

"We will require the PAs (RENs, IOUs, and CCAs) to develop a joint cooperation memo to demonstrate how they will avoid or minimize duplication for programs that address a common sector (e.g., residential or commercial) but pursue different activities, pilots that are intended to test new or different delivery models for scalability, and/or programs that otherwise exhibit a high likelihood of overlap or duplication and are not targeted at hard-to-reach customers. For such programs, each PA must explicitly identify and discuss how its activities are complementary and not duplicative of other PAs' planned activities."

TRC is currently used as the primary measure of cost-effectiveness, which is not the intention according to the Commission's Standard Practice Manual.

See Bierman Direct at HB-9.

D.18-05-041, pp. 97, 122, FOF 55, COL 47 (June 5, 2018).

⁵⁰ *Id.* at 97.

Accordingly, the 2024-2025 JCM between SDREN and SDG&E was submitted on November 5, 2024, and illustrates how this collaboration will occur and ensure customers are routed to the programs and services that will best meet their needs. Additionally, provided SDREN's programs will not be launching until the end of 2025, there is not ample evidence to demonstrate implemented programs have been redundant. Absent further justification, SDG&E's claim is unsubstantiated.

Finally, the Commission should recognize that SDREN's service area is not coterminous with SDG&E's. While SDG&E's current EE portfolio extends into southern Orange County, this portion of its service territory falls outside SDREN's authorized footprint. If SDG&E is permitted to withdraw, these customers risk being left without sufficient access to EE programs – an outcome that underscores the importance of thoughtfully planning for continued service coverage across the entire territory.

3. SDG&E's Application Does Not Provide Additional Information Needed to Properly Evaluate its Request.

SDG&E's Application is notably lacking an impact analysis and discussion of remediation efforts. Impact analyses are crucial for the Commission to understand the Application's effect on job losses, local workforce opportunities, and other equity implications resulting from program closures. In addition to the previously described threshold legal and policy issues, it is important that the Commission consider remediation measures for underperforming IOU portfolios to maximize statewide energy savings and GHG reductions. These missing details are material to the issues raised in the Application and as such, the absence of this information further indicates that the Application cannot yet be decided. If the Commission finds through the EE rulemaking that it is acceptable for an IOU PA to withdraw from administering regional EE programs, then it should

also provide detailed guidance to IOU PAs that wish to withdraw on what must be included in such an application.

III. CATEGORIZATION OF PROCEEDING, ISSUES TO BE CONSIDERED, NEED FOR HEARINGS, AND PROPOSED PROCEDURAL SCHEDULE

A. Categorization

The Joint Parties agree with the categorization of this proceeding as ratesetting.⁵¹

B. Need For Hearings

As discussed above, the Joint Parties recommend that the Commission migrate the consideration of threshold issues from this Application into the EE OIR for further consideration. Subject to that recommendation, the Joint Parties anticipate that hearings may be necessary to further develop the record on the important issues of facts raised in this Application.

C. Issues to be Considered

SDG&E proposes as the sole issue to be considered: "The primary issue to be considered is whether SDG&E is authorized to close its regional programs, yielding approximately \$300 million in savings for ratepayers over a six-year period." In addition to removing the contested factual assertion contained therein, the Joint Parties offer the following recommendations:

- 1) The Joint RENs recommend R.25-04-010 as the forum in which threshold legal and policy questions be addressed. If the Commission does not elect to address those issues in the Rulemaking, those issues should be scoped here.
- 2) If the Commission determines that SDG&E may withdraw, in whole or in part, from its role as regional program administrator, the Commission should scope whether the process and timeline of the proposed reduction in services to ratepayers is adequate.

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Application at 8.

3) Finally, consistent with the Commission's Environmental and Social Justice Action Plan ("ESJ" Action Plan), the Joint Parties strongly encourage the Commission to include ESJ impacts in the scope of the proceeding.

D. Schedule

It is imperative that the Commission decline SDG&E's request for expedited treatment. The Application raises novel questions of law and policy that necessitate additional time for the Commission and parties to thoroughly evaluate. As the Commission will be considering issues material to the resolution of this Application in the EE rulemaking, prudence, efficiency and consistency require that those issues be resolved prior to considering SDG&E's related request. Accordingly, the Joint Parties respectfully request that the Commission integrate the schedule as proposed below into the EE rulemaking schedule.⁵² This schedule ensures sufficient time and opportunity for the EE OIR to resolve related issues included in the preliminary track, which in turn should result in more efficient deliberation starting in 2026 of outstanding issues associated with the SDG&E Application.

Event	Proposed Date	
ALJ Ruling Seeking Input on Outstanding IOU Withdrawal Key Policy/Legal Issues	Late Q1 2026	
Opening Comments Filed and Served	Q2 2026	
Reply Comments Filed and Served	Q2 2026	
ALJ Ruling with Staff Proposal for Party Comment	Late Q2 2026	
Opening Comments	Q3 2026	
Reply Comments	Q3 2026	
Proposed Decision	Late Q3 2026	
Final Decision	Q4 2026	

⁵² This is the same schedule proposed in the Joint REN opening comments on the OIR at 26-28.

If the Commission adopts an alternate schedule, the Joint Parties request that – to the extent

practicable – the Commission stagger the deadlines for the present Application, the EE OIR

including the foundational questions referenced above, and the filing and response deadlines of

the forthcoming Portfolio Administrator Applications (due February 15, 2026).

IV. COMMUNICATIONS AND SERVICE

Each of the Joint Parties respectfully requests to be listed as individual parties, consents to

"email only" service, and requests that the following individuals be added to the service list for

A.25-04-014:

Party Representatives

Please list the following as the party representative for SDREN:

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E-mail: agreenwald@keyesfox.com

Please list the following as party representative for BayREN and 3C-REN:

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Elizabeth M. Kelly

LAW OFFICE OF ELIZABETH KELLY

P.O. Box 225037

San Francisco, CA 94122

Telephone: (415) 535-9998

Email: beth@emk-law.com

Counsel for:

ASSOCIATION OF BAY AREA GOVERNMENTS, for the

Bay Area Regional Energy Network (BayREN)

program

COUNTY OF VENTURA, for the Tri-County Regional

Energy Network (3C-REN) program

Joint Parties' Protest of SDG&E Application

Please list the following as party representative for I-REN:

Casey Dailey Director of Energy & Environmental Programs Western Riverside Council of Governments

3390 University Ave., #200 Riverside, California 92501 Telephone: (951) 405-6720 E-mail: cdailey@wrcog.us

Please list the following as party representative for the City of San Diego:

William Smith Deputy City Attorney Office of the San Diego City Attorney 1200 Third Avenue, Suite 1100 San Diego, California 92101 Telephone: (619) 533-6449 E-mail: smithwt@sandiego.gov

Please list the following as party representative for NREN:

Patricia Terry Senior Portfolio Manager Redwood Coast Energy Authority 633 Third St Eureka, CA 95501

Telephone: (707) 269-1700

E-mail: pterry@redwoodenergy.org

Information-Only

Please include the SDREN representatives listed below on the information-only service list

for this proceeding:

Aisha Cervantes-Cissna Senior Policy Manager San Diego Community Power

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Affairs

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Sheena Tran Associate Director of Programs San Diego Community Power P.O. Box 12716

San Diego, CA 92101

Telephone: (619) 732-6266

E-mail: stran@sdcommunitypower.org

V. CONCLUSION

For the foregoing reasons, the Joint Parties respectfully request that the Commission first address the broader legal and policy questions raised by this Application in proceeding R.25-04-010, prior to taking up the merits of SDG&E's specific request. The Joint Parties look forward to working collaboratively with the Commission and SDG&E to address the unique questions posed by this Application in the EE OIR. Following the resolution of the threshold issues described herein, the Joint Parties look forward to resolving this Application in a manner that best serves all customers in San Diego County.

Respectfully submitted,

/s/ Alissa Greenwald

Alissa Greenwald Jacob Schlesinger Keyes & Fox LLP

1580 Lincoln Street, Suite 1105

Denver, CO 80203

Telephone: (913) 302-5567

E-mail: agreenwald@keyesfox.com jschlesinger@keyesfox.com

On behalf of San Diego Community Power

/s/ Elizabeth M. Kelly

Elizabeth M. Kelly LAW OFFICE OF ELIZABETH KELLY P.O. Box 225037

San Francisco, CA 94122 Telephone: (415) 535-9998 Email: beth@emk-law.com

Counsel for:

ASSOCIATION OF BAY AREA GOVERNMENTS, for the Bay Area Regional Energy Network (BayREN) program COUNTY OF VENTURA, for the Tri-County Regional Energy Network (3C-REN) program

/s/ Casey Dailey

Casey Dailey

Director of Energy & Environmental Programs Western Riverside Council of Governments 3390 University Ave., #200 Riverside, California 92501 Telephone: (951) 405-6720

E-mail: cdailey@wrcog.us

Administrative Lead Agency for Inland Regional Energy Network (I-REN), ID #246

/s/ Patricia Terry

Patricia Terry
Senior Portfolio Manager
Redwood Coast Energy Authority
633 Third St
Eureka, CA 95501

Telephone: (707) 269-1700

E-mail: pterry@redwoodenergy.org

Representative for NREN

/s/ William Smith

William Smith
Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, California 92101
Telephone: (619) 533-6449

E-mail: smithwt@sandiego.gov

Representative for City of San Diego

May 29, 2025

ITEM 8 ATTACHMENT G



June 17, 2025

San Diego Community Power PO BOX 12716 San Diego, CA 92112 VIA ELECTRONIC MAIL

Ms. Leuwam Tesfai
Deputy Executive Director
Energy and Climate Policy
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Ms. Candace J. Morey
Interim Director
Office of Distributed Energy Resources, Natural Gas and Retail Rates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Community Choice Aggregator (CCA) Customer Access to Self-Generation Incentive Program (SGIP) Funding

Dear Ms. Tesfai and Ms. Morey:

This letter is to respectfully request the California Public Utilities Commission (CPUC) take swift action to reduce barriers for low-income community choice aggregator (CCA) residential customers seeking to access limited Self-Generation Incentive Program (SGIP) funds. San Diego Community Power (SDCP) has a pending advice letter (Center for Sustainable Energy Advice Letter 165-E) requesting approval of its Solar Battery Savings program as a Qualified Demand Response (DR) program. This program has been successfully deployed and has proven to increase individual customer resiliency, reduce the electric grid's net peak demand, lower electric ratepayer costs, and decrease emissions of greenhouse gas and localized air pollution. These outcomes align with the CPUC's stated intent for the SGIP. If approved, SDCP's Solar Battery Savings program would provide an immediate and equitable pathway for low-income SDCP customers to access SGIP Residential Storage and Solar Equity (RSSE) program incentives in a timely manner.

1. There is Currently No Pathway for a CCA Customer in San Diego to Participate in SGIP

Last month the Commission launched the SGIP RSSE, a "statewide initiative" intending to "help California's low-income utility customers." The RSSE program is time- and budget-limited, and delaying access to a class of customers for months or years essentially prevents that class from accessing the funding. The legislature did *not* provide funding for RSSE only to benefit bundled customers of Investor-Owned Utilities (IOUs).²

But as is true for many low-income CCA residential customers around the state, SDCP's residential customers cannot access the recently-opened RSSE program. To receive funding from the RSSE budget, the Commission is requiring low-income customers to enroll in a "Qualified Demand Response" program.³ However, no "Qualified Demand Response" program is currently available to SDCP residential customers.

a. The Only "Qualified Demand Response" Program in San Diego Is Only Open to Bundled Customers

There is currently only one "Qualified Demand Response" program in San Diego: San Diego Gas & Electric (SDG&E) EV-TOU-5-P. <u>SDG&E EV-TOU-5-P</u> is a "critical peak pricing" rate that is <u>only</u> open to bundled customers. Accordingly, bundled customers are currently the only customers able to access SGIP incentives. The Commission has left 70% of the customers in San Diego County (those served by the two CCAs) unable to access SGIP incentives unless they opt out of the CCA.

b. The Road Blocks Facing CCA Customers Who Seek Access to the SGIP Program

SDCP has been made aware of instances where contractors are encouraging customers to opt out of CCA service in order to be eligible for the SGIP incentive. But even if one of these contractors convinced a San Diego electricity customer to leave SDCP today, that customer *still* would not be eligible to enroll in the only currently available "Qualified Demand Response" program for six months. They would be required to spend that time using Transitional Bundled Service—a six-month service that is extremely volatile and prohibits enrollment in IOU-administered SGIP Qualified Demand Response programs. So, that hypothetical customer would not only remain without access to payment under the SGIP, but they would also be subject to a more unpredictable commodity product.

As such, forcing customers back into bundled service is not only anti-competitive, but it also undermines the purpose of SGIP's RSSE budget: helping California's low-income

¹ California Public Utilities Commission, "\$280 Million Program to Expand Battery Storage and Solar Access for Low-Income Households" (May 29, 2025), available at: https://www.cpuc.ca.gov/news-and-updates/all-news/\$280-million-program-to-expand-battery-storage-and-solar-access-for-low-income-households.

² See Senate Bill 700 (2018), section (i) ("The commission shall ensure that distributed generation resources are made available in the program for all ratepayers.").

³ It is also worth noting that the governing statute does not obligate the Commission to require customer participation in such a program, but rather the statute requires the CPUC to *consider* requiring customers to participate in a demand response *or* peak load reduction program. Public Utilities Code 379.10(b).

customers. Once customers are enrolled in a standard SDG&E tariff six months after they opt to leave SDCP, they will be subject to higher ongoing commodity costs. SDG&E's rates are 5% and 3% higher than SDCP's PowerBase generation rate and PowerOn rate, respectively. They would spend at least a year with those rates, as customers must wait 12 months before returning to CCA service.

The bottom line is, under the status quo, low-income customers are being encouraged to leave a lower cost option for their electricity service, in order to possibly be eligible for an SGIP incentive in six months, assuming the funding does not run out.

c. The Pending Capacity Bidding Program Advice Letter Is Also not a Practical Solution

SDG&E has a pending Advice Letter 4569-E to implement a residential Capacity Bidding Program (CBP) that would meet SGIP's "Qualified Demand Response" program requirements and theoretically be available to CCA customers (once approved). As proposed, that program is also not a solution for CCA customers considering whether to reserve funds this year.

Under the proposed program rules, SDCP understands that individual residential customers must rely on third-party aggregators to participate in the CBP and cannot personally enroll in them. But based on SDCP's engagement with industry stakeholders, there is currently not an aggregator implementing residential Capacity Bidding programs.

If the pending advice letter is approved and a hypothetical aggregator stepped forward to offer the program, it is still the case that no such program would be available for many months because that aggregator would need to undertake program development work before offering it to residential customers. Therefore, even if approved, SDG&E's CBP does not remove the barrier facing San Diego CCA customers seeking SGIP incentives.

d. It Is Unreasonable to Delay Incentives for Low-Income Customers Under the RSSE Program

Per the program handbook rules, customers cannot get their SGIP incentive paid until after enrollment in a Qualified Demand Response program. In practical terms, this means that developers are unlikely to serve low-income CCA customers who are considering transitioning to an IOU to take advantage of the RSSE program. Such customers cannot afford upfront payment of the system until the rebate is paid, and developers are unlikely to be able serve these customers if there is regulatory uncertainty regarding the incentive payment.

2. SDCP's Solar Battery Savings Program Is a Viable and Proven DR Solution That Dispatches Resources on a Daily Basis

SDCP also has a pending advice letter, Center for Sustainable Energy Advice Letter 165-E requesting approval of its Solar Battery Savings program as a Qualified DR program for SGIP

purposes. Approving the Solar Battery Savings program will immediately allow SDCP customers to access SGIP funding and support California's policy goals.

The program aggregates participants' batteries and dispatches them on a daily basis, reducing SDCP's Resource Adequacy obligation (and is therefore counted by the California Energy Commission as a "load modifying resource"). The program can also respond to grid events through active dispatches triggered by CAISO day-ahead pricing. SDCP launched the Solar Battery Savings Pilot⁴ in 2024, which is active and has already demonstrated peak demand reductions, enhanced resiliency benefits, and reduced ratepayer costs. The pilot was featured as a case study in the U.S. Department of Energy's Pathways to Commercial Liftoff: Virtual Power Plants Report on January 10, 2025.

As is further noted in Center for Sustainable Energy Advice Letter 165-E, SDCP plans to launch an updated version of the program in 2025 that builds on the foundational program design of the pilot and adds active demand response events, which are tied to CAISO market pricing signals. Importantly, unlike SDG&E's critical peak pricing rate⁵ or proposed Residential Capacity Bidding Program⁶—which offers a small number of annual or monthly "events" during which participating customers can reduce load to receive compensation—SDCP's Solar Battery Savings program is a *daily* load-shifting program that can support California's reliability goals on a routine basis. In fact, a maximum of 18 Reduce Your Use events can be triggered per calendar year under EV-TOU-5-P, the critical peak pricing program that is only available to bundled customers. The CBP, which will be open to CCA customers if an aggregator eventually steps up to offer it (and once the CPUC approves the pending advice letter), similarly can only be utilized up to six days per month, and the program only runs for six months out of the year.

3. Given that the Residential Clean Energy Credit Will Likely Sunset in 2025, It is Imperative That the Commission Take Swift Action to Preserve Equity and Legislative Intent

SDCP therefore respectfully requests the Commission approve its pending advice letter or otherwise take swift action to ensure SGIP RSSE funding does not flow solely to bundled customers. The status quo is misaligned with the intent of the Legislature, which allocated substantial SGIP funding for low-income customers statewide⁷ and not solely to customers of the IOUs.

Even setting aside the limited RSSE program budget, time is of the essence. As the Commission is aware, the Residential Clean Energy Credit (RCEC) provides a 30% credit to support the installation of residential solar and storage systems. The version of the One Big Beautiful Bill Act approved by the House of Representatives would sunset the RCEC at the end of 2025.8 This tax credit plus an SGIP incentive can cover the entire cost of a solar and battery system for a low-

⁴ The Solar Battery Savings pilot resulted in over 1,600 projects, providing an expected 7.2 MW of peak load reduction daily during on-peak periods for up to 10 years.

⁵ EV-TOU-5-P provides a maximum of eighteen Reduce Your Use events per calendar year.

⁶ Capacity Bidding Program provides a maximum of six events per month ranging from two to four hours.

⁷ See supra note 2.

⁸ One Big Beautiful Bill Act, H.R. 1 (119th Cong.), Sec. 112006 (engrossed in House of Representatives, May 22, 2025), available at https://www.congress.gov/bill/119th-congress/house-bill/1/text.

income customer. The longer the Commission delays approval of advice letters to add qualified DR programs to the SGIP program, the fewer low-income Californians will be able to take advantage of the existing tax credit, before the likely sunset at the end of 2025.

Under the current status quo, regardless of whether they meet the other requirements, the Commission's delay is effectively blocking 70% of San Diegans from the ability to install a solar and battery system for potentially no cost. Even if all customers opted out of their CCA today, they would not be eligible to enroll in a qualified DR program until mid-December, approximately two weeks until the threatened sunset of the existing 30% tax credit. The Commission must act swiftly to remedy this inequity. SDCP appreciates the continued dialogue with Energy Division and Commission Staff regarding the SGIP and looks forward to the Commission's expeditious resolution of the concerns described in this letter.

Sincerely,

Karin L. Burns

Chief Executive Officer, San Diego Community Power



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

Xiomalys Crespo, Senior Community Engagement Manager

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approval of Community Advisory Committee Member for City of Chula

Vista

DATE: June 26, 2025

RECOMMENDATION:

Approve the appointment of Alonso Gonzalez to the Community Advisory Committee (CAC) for the City of Chula Vista.

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 the Authority. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets, and geographic regions.

ANALYSIS AND DISCUSSION:

At both the March 2024 CAC and Board of Directors meetings, staff announced a CAC vacancy for the City of Chula Vista. Since, staff has promoted this and other vacancies through Community Power's social media channels and the CAC, as well as directly engaging with staff, advocacy organizations, and the general public during networking and tabling events in all of our member agencies. Staff worked with Director Inzunza to

review the three applications received and advance the nomination process for Alonso Gonzalez.

If approved by the Board with a simple majority vote, staff will work with the representative to conduct their oath of office and onboarding prior to the next CAC meeting on August 14, 2025. Staff will also update Attachment A: CAC Roster and Seat Assignments, which is publicly available through Community Power's website, to include the new representative.

As of the time this report was drafted, there is one expected CAC vacancy for the City of Encinitas, once Member Gary Jahns is termed out in June 2025.

FISCAL IMPACT:

N/A

ATTACHMENTS:

A: CAC Roster and Seat Assignments

ITEM 9 ATTACHMENT A



Community Advisory Committee Roster

Member Agency	Name	Appointed	Current Term	Term Ends
San Diego	Luis Montero-Adams	August 2024	First	2025
	Matthew Vasilakis (Chair)	April 2020	Second	2026
Chula Vista	Anthony Sclafani	July 2022	First	2025
	Vacant	-	-	-
La Mesa	Shaun Sumner	March 2025	First	2025
	David Harris	April 2020	Second	2026
Encinitas	Gary L. Jahns	April 2020	Second	2025
	Tara Hammond	April 2020	Second	2026
Imperial Beach	Kenneth Hoyt	May 2024	First	2025
	Ilian Sandoval	November 2023	First	2026
County of San Diego (unincorporated)	Peter Andersen	February 2022	First	2025
	Ross Pike	January 2025	First	2027
National City	Aida Castañeda (Secretary)	February 2022	First	2025
	Lawrence Emerson (Vice-Chair)	February 2022	Second	2026

Terms end at the end of every June. Members are subject to two, three-year consecutive terms. They are also subject to CAC Policies and Procedures. Odd seats are displayed in blue.



SAN DIEGO COMMUNITY POWER Staff Report – Item 10a

TO: Board of Directors

FROM: Nicholaus Norvell, Special Legal Counsel

SUBJECT: Approve Amended and Restated Chief Executive Officer Employment

Agreement

DATE: June 26, 2025

RECOMMENDATION:

Approve Amended and Restated Chief Executive Officer Employment Agreement.

BACKGROUND:

On April 18, 2022, San Diego Community Power ("Community Power") entered into a Chief Executive Officer Employment Agreement ("Agreement") with Chief Executive Officer ("CEO") Karin Burns. The Agreement provides the CEO with salary and benefits as described in the Agreement, including standard benefits received by all other Community Power employees, which may include health insurance, retirement, vacation, cost of living adjustments, etc.

On October 27, 2022, the parties entered into a First Amendment to the Agreement that extended the term, revised the notice provision as to termination of the Agreement without cause, and extended the relocation expense reimbursement time period. On June 22, 2023, the parties entered into a Second Amendment to the Agreement to provide an annual merit increase. On August 22, 2024, the parties entered into a Third Amendment to the Agreement to provide an annual merit increase and a market adjustment.

ANALYSIS AND DISCUSSION:

Pursuant to the terms of the Agreement, the CEO is to be evaluated by the Board of Directors annually. As part of the CEO's performance evaluation, the Board may consider a merit increase or other adjustments in salary based on performance and market conditions.

During this item, the Board will consider approving an Amended and Restated version of the Agreement that incorporates prior amendments and makes additional changes to the Agreement as negotiated and agreed by the parties. Final terms of the Amended and Restated Agreement will be verbally announced and voted on as part of this agenda item. Alternatively, if the Amended and Restated Agreement is fully finalized prior to the meeting, copies will be made available as an update to the agenda packet and/or provided to the Board and public at the meeting. Any increase in salary would be effective on July 1, 2025, or other such time as approved by the Board.

FISCAL IMPACT:

There is no impact to the current budget for Fiscal Year 2025-26 as CEO salary and benefits were anticipated to be incurred during this fiscal year.

ATTACHMENTS:

A: Amended and Restated Chief Executive Officer Employment Agreement

ITEM 10A ATTACHMENT A

AMENDED AND RESTATED CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT ("Agreement") is made by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority ("SDCP"), and KARIN BURNS, an individual ("Executive") as of ______, 2025 ("Effective Date"). SDCP and Executive are sometimes individually referred to herein as the "Party" and collectively as the "Parties."

RECITALS

- A. SDCP and Executive are Parties to that certain Chief Executive Officer Employment Agreement dated April 18, 2022 (the "**Prior Agreement**"), pursuant to which Executive has been employed as SDCP's Chief Executive Officer ("**CEO**");
- B. Pursuant to the Prior Agreement, Executive serves as the Chief Executive Officer to SDCP and is required to perform the functions and duties specified by SDCP's Board of Directors and as provided by any such other resolutions of the Board, applicable laws, rules, regulations, orders, directives, policies, or procedures in effect or adopted by SDCP.
- C. SDCP and Executive entered into a First Amendment to the Prior Agreement dated October 27, 2022 ("First Amendment");
- D. SDCP and Executive entered into a Second Amendment to the Prior Agreement dated June 22, 2023 ("Second Amendment");
- E. SDCP and Executive entered into a Third Amendment to the Prior Agreement dated August 22, 2024 ("**Third Amendment**");
- F. The Board wishes to continue to employee Executive as CEO, and Executive wishes to continue such employment, subject to the terms and conditions set forth in this Agreement;
- G. This Agreement supersedes and replaces the Prior Agreement, First Amendment, Second Amendment, and Third Amendment between the Parties;
- NOW, THEREFORE, in consideration of such continuing employment and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

- SECTION 1. <u>DUTIES OF EXECUTIVE</u>. Executive shall have the powers of the CEO position and perform the functions and duties specified by SDCP's Board and as provided by any such other resolutions of the Board, applicable laws, rules, regulations, orders, directives, policies, or procedures now in effect or hereafter adopted by SDCP.
 - a. <u>Full Energy and Skill</u>. Executive shall faithfully, diligently, and to the best of Executive's abilities, perform all duties that may be required under this Agreement. Executive agrees that Executive has a duty of loyalty and a general fiduciary duty

- to SDCP. Executive shall devote the whole of Executive's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to SDCP's business and affairs.
- b. No Conflict. Executive shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Executive's duties. Nothing herein shall prevent Executive from participating in charitable, civic, educational, professional, or community affairs or from serving on the board of directors or advisory boards of private companies, subject to SDCP's Board approval and provided such activities do not materially interfere with the performance of her duties hereunder or create a potential conflict with SDCP or the appearance thereof. If at any time service on any board of directors or advisory board would, in the good faith judgment of the Board, conflict with the Executive's fiduciary duty to SDCP or create any appearance thereof, then Executive shall as soon as reasonably practicable considering any fiduciary duty to the other entity, resign from such other board of directors or advisory board after written notice of the conflict is receive from the Board.
- c. <u>Hours of Work</u>. Executive is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the CEO position. Executive does not have set hours of work as Executive is expected to be available at all times. It is recognized that Executive must devote a great deal of time to the business of SDCP outside of SDCP's customary office hours, and to that end Executive's schedule of work each day and week may vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Board.

SECTION 2. <u>EFFECTIVE PERIOD</u>. Executive shall serve at the will and pleasure of the Board of Directors.

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

SECTION 3. TERMINATION.

a. By SDCP—Not "For Cause".

At any time, SDCP may terminate Executive's employment without Cause

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

b. By SDCP—"For Cause".

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

c. Statutory Requirements.

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

d. By Executive.

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

SECTION 4. COMPENSATION AND PERFORMANCE REVIEWS.

- a. Executive shall receive a three and one-half percent (3.5%) merit increase to her current base annual salary, bringing Executive's total base salary to Four Hundred Eighty Six Thousand Seven Hundred Seventy Two Dollars and Eighty Two Cents (\$486,772.82) effective as of July 1, 2025, payable on a pro-rata basis in accordance with SDCP's payroll practices and less all applicable payroll taxes and withholdings.
- b. SDCP shall perform a performance review of Executive at least annually. The Board or a committee of the Board of Directors shall additionally review the base compensation, bonuses, and benefits provided to Executive under this Agreement and may, in their sole discretion, adjust the same.

SECTION 5. <u>OTHER BENEFITS</u>. Executive shall be entitled to participate in SDCP's benefits adopted by SDCP on the same basis as other executives of SDCP.

- a. <u>Automobile</u>. Executive shall receive a gross monthly vehicle allowance of Five Hundred Dollars and No Cents (\$500.00) per month. The Parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, maintenance of a vehicle, etc. Executive shall not be separately reimbursed for mileage incurred in connection with the execution of her duties.
- b. Technology Allowance. Executive shall receive either an SDCP-owned cell phone and (accompanying SDCP-paid plan) or a \$100 monthly taxable technology allowance to use towards her personal discretionary technological purchases and expenses in furtherance of employment (e.g., cellular phone, tablet, data plan, laptop computer). The Parties intend this allowance to cover all technology-related costs that Executive incurs in the course and scope of her employment with SDCP. If Executive's actual business use exceeds her allowance, she may contact Human Resources and request payment in a higher amount to correspond with actual business use supported by receipts.
- c. <u>Vacation Leave</u>. Executive shall accrue an additional forty (40) hours of vacation leave annually (i.e., an additional 1.67 hours semi-monthly) consistent with SDCP's Vacation Leave accrual schedule established for full-time, regular employees of SDCP. Executive shall be subject to all other terms and conditions of SDCP's Vacation Leave policy to the same extent as other executives of SDCP.
- d. Other Benefits. Subject to the provisions of this Section 5, Executive shall be entitled to participate in benefits, including health care coverage and premium

payments, retirement plans and/or 401(k) plans, and to receive sick leave, vacation accrual, and any and all other benefits to the same extent and as other executives of SDCP.

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

SECTION 7. <u>OTHER TERMS AND CONDITIONS OF EMPLOYMENT</u>. SDCP shall make and implement any other terms and conditions of employment related to the performance of Executive which may be reflected in SDCP policies and procedures applicable to employees in general and to other executives of SDCP specifically, provided such terms and conditions are not inconsistent with the provisions of this Agreement or by law.

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

To SDCP: Attn: Chair of the Board of Directors

San Diego Community Power

P.O. Box 12716

San Diego, CA 92112-3716

With a copy to:

Veera Tyagi

SDCP General Counsel

P.O. Box 12716

San Diego, CA 92112-3716

To Executive: Karin Burns

At the address on file with SDCP's Human Resources Department

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

SECTION 10. <u>AMENDMENTS</u>; <u>WAIVERS</u>. This Agreement may not be amended except by an instrument in writing, signed by each of the Parties. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

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

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

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

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

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

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

SECTION 17. <u>COUNTERPARTS AND ELECTRONIC SIGNATURES</u>. This Agreement may be executed in triplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that this Agreement may be executed and delivered by electronic signatures and that the signatures appearing

on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, SDCP and Executive have executed this Amended and Restated Chief Executive Officer Employment Agreement on the date written above:

SAN DIEGO COMMUNITY POWER	EXECUTIVE
By:	By: Karin L. Burns, Chief Executive Officer
APPROVED AS TO FORM:	
By: SDCP Special Counsel	
ATTEST:	
By: Maricela Hernandez SDCP Clerk of the Board	



SAN DIEGO COMMUNITY POWER Staff Report – Item 10b

TO: Board of Directors

FROM: Nicholaus Norvell, Special Legal Counsel

SUBJECT: Approve First Amendment to General Counsel Employment

Agreement

DATE: June 26, 2025

RECOMMENDATION:

Approve First Amendment to General Counsel Employment Agreement

BACKGROUND:

On December 14, 2023, San Diego Community Power ("Community Power") approved a General Counsel Employment Agreement ("Agreement") with General Counsel Veera Tyagi. The Agreement provides the General Counsel with salary and benefits as described in the Agreement, including standard benefits received by all other Community Power employees, which may include health insurance, retirement, vacation, cost of living adjustments, etc.

ANALYSIS AND DISCUSSION:

Pursuant to the terms of the Agreement, the General Counsel is to be evaluated by the Board of Directors annually. As part of the General Counsel's performance evaluation, the Board may consider a merit increase or other adjustments in salary based on performance and market conditions.

During this item, the Board will consider approving a First Amendment to the Agreement that provides for a merit increase or other salary adjustment and makes additional changes to the Agreement as negotiated and agreed by the parties. Final terms of the First Amendment will be verbally announced and voted on as part of this agenda item. Alternatively, if the First Amendment is fully finalized prior to the meeting, copies will be made available as an update to the agenda packet and/or provided to the Board and public at the meeting. Any increase in salary would be effective on July 1, 2025, or other such time as approved by the Board.

FISCAL IMPACT:

There is no impact to the current budget for Fiscal Year 2025-2026 as General Counsel salary and benefits were anticipated to be incurred during this fiscal year.

ATTACHMENTS:

A: First Amendment to General Counsel Employment Agreement

ITEM 10B ATTACHMENT A

FIRST AMENDMENT TO GENERAL COUNSEL EMPLOYMENT AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND VEERA TYAGI

THIS FIRST AMENDMENT ("First Amendment") is entered into effective as of

("Amendment Effective Date"), by and between the SAN DIEGO
COMMUNITY POWER, a California joint powers authority ("SDCP") and VEERA TYAGI
("Executive"). SDCP and Executive are sometimes individually referred to herein as the "Party" and collectively as the "Parties."

RECITALS

- A. The Parties entered into a General Counsel Employment Agreement dated February 1, 2024 ("**Agreement**").
- B. Pursuant to the Agreement, Executive serves as the General Counsel to SDCP and is required to perform the functions and duties specified by SDCP's Board of Directors and as provided by any such other resolutions of the Board, applicable laws, rules, regulations, orders, directives, policies, or procedures in effect or adopted by SDCP.
- C. The Parties desire to execute this First Amendment as of the Amendment Effective Date.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties agree to the following terms and conditions:

- 1. <u>Amendment 1 to the Agreement.</u> The Parties hereby agree to amend the Agreement as follows:
 - a. <u>Section 1(a)</u>. Section 1(a) of the Agreement is amended to correct "appliable law" to "applicable law."
 - b. <u>Section 2</u>. <u>EFFECTIVE PERIOD</u>. Section 2 of the Agreement is amended to state the following: "Executive is appointed as General Counsel beginning on the Effective Date of the General Counsel Employment Agreement and shall serve at the will and pleasure of the Board. Executive's employment with SDCP may be terminated by either Party in accordance with Section 3 of the General Counsel Employment Agreement."
 - c. <u>Section 3(a)</u>. Section 3(a) of the Agreement is amended to delete "as" and insert "For Cause' is" in the parenthetical clause referring to the definition of "For Cause" and is further amended to correct "Executive execution" to "Executive's execution." The second paragraph regarding Government Code section 53260 is also deleted.
 - d. <u>Section 3(b)</u>. Section 3(b) is amended to insert the following language at the end of the clause set forth in (ii) and immediately before (iii): ", unless such direction is fraudulent or in violation of a law, statute, ordinance, or regulation, or violates a rule of professional conduct".

- e. <u>Section 4(a)</u>. Section 4(a) of the Agreement is amended to provide Executive with a four percent (4%) merit increase in salary, and a fifty thousand dollar (\$50,000) market adjustment, bringing Executive's total base salary to Four Hundred Eight Thousand Two Hundred Forty-One Dollars and Sixty Cents (\$408,241.60), effective as of July 1, 2025, payable on a pro-rata basis in accordance with SDCP's payroll practices and less all applicable payroll taxes and withholdings.
- f. Section 5(b). Section 5(b) of the Agreement is amended to delete "his or" where it appears in the section and to add the following sentence at the end of the section: "If Executive's actual business use exceeds her allowance, she may contact Human Resources and request payment in a higher amount to correspond with actual business use supported by receipts."
- g. <u>Section 7</u>. Section 7 is amended to state as follows: "SDCP shall make and implement any other terms and conditions of employment related to the performance of Executive which may be reflected in SDCP policies and procedures applicable to employees in general and to other executives of SDCP specifically, provided such terms and conditions are not inconsistent with the provisions of this Agreement or by law."
- h. <u>Section 8</u>. Section 8 of the Agreement is amended to replace B. Allison Borkenheim at Littler Mendelson and instead send a copy of any notice to Christina Snider, Partner; Quarles & Brady, LLP; 101 W. Broadway, Suite 1500; San Diego, CA 92101.
- 2. <u>Capitalized Terms</u>. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.
- 3. <u>Counterparts</u>. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- 4. <u>Full Force</u>. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the General Counsel Employment Agreement between San Diego Community Power and Veera Tyagi as of the date first set forth above.

SAN DIEGO COMMUNITY POWER	VEERA TYAGI
Paloma Aguirre Chair, SDCP Board of Directors	Veera Tyagi, General Counsel
APPROVED AS TO FORM:	
Special Labor Counsel	
ATTEST:	
Maricela Hernandez SDCP Clerk of the Board	



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

TO: Board of Directors

FROM: Patrick Welch, Associate Director of Legislative Affairs

Andrea Torres, Director of Origination

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Tariffs, Tax Credits and Executive Orders: New-Build Market Outlook

Update

DATE: June 26, 2025

RECOMMENDATION:

Receive and file the Community Power status report on federal policy and budget as it relates to clean energy procurement.

BACKGROUND:

This staff report is a summary of the latest status – as of June 16 – on federal policy and budgeting matters that have the potential to impact Community Power's current and future electricity procurement portfolio.

STAFF ANALYSIS:

I. Tariffs

The U.S. imposed tariffs on Chinese goods of between 25%-50% during the prior Trump Administration and during the Biden Administration. Since January, the current Administration has signaled a wide range of tariffs to be imposed on goods from various nations and those tariff levels have changed numerous times in the interim. The tariff percentages applied to China reached their peak earlier in April at 145% and at one point reached 3,521% on solar equipment from Cambodia. Since then, as of May 12, China and the U.S. have agreed to a 90-day pause in their trade war at an average of 30% tariff on Chinese goods into the U.S. and a 10% tariff on U.S. goods into China, noting that other Southeast Asian countries that are a significant source of PV and battery material supply have been among the hardest hit, facing between 32% and 49% tariffs on goods into the U.S.

II. Tax Credits

Congress is expected to send the President budget reconciliation legislation that would extend the 2017 Tax Cuts and Jobs Act. Congress will need to make corresponding budget cuts to pay for the Tax Act extension. One means of creating savings is to reduce or eliminate federal energy tax credits that support the transition to clean energy. Current law, as enacted by the Inflation Reduction Act of 2022, provides a 30% tax credit for utility scale clean energy projects. There are two routes to obtain the credit: either through the Production Tax Credit (PTC), which is based on the electrical output of a clean energy project, or the Investment Tax Credit (ITC), which is based on the total investment value of a project. Current law also creates consumer-level tax credits. The Residential Clean Energy Credit (RCEC) provides a 30% credit to support the installation of residential solar and storage systems, and the Home Energy Efficiency Investment Credit (HEEIC) provides a dollar-capped credit (\$3,200) for home energy efficiency and electrification improvements.

House of Representatives Approves Legislation to Phase Out Energy Tax Credits

The One Big Beautiful Bill Act (<u>H.R. 1</u>) is the budget reconciliation legislation of the majority party in the House of Representatives. The over 1,000-page bill was approved by the House on May 22. With respect to clean energy tax credit issues, it would do the following:

- Eliminate the New Clean Vehicle Tax Credit (\$7,500). The 30% residential solar and storage tax credit (RCEC) and the \$3,200 home energy efficiency and electrification upgrade tax credit (HEEIC) would sunset at the end of 2025. Solar companies would also be barred from claiming a tax credit for lease agreements for rooftop solar.
- Phase out the ITC and the PTC for all utility-scale technologies by December 31, 2028. Projects would have to either start construction within 60 days of the bill's enactment or be placed into service by December 31, 2028, to qualify.
- Impose restrictive foreign entities of concern (FEOC) conditions on projects seeking ITC and PTC benefits in such a manner that energy facilities could not receive any material assistance from foreign controlled or influenced entities, including the component parts of facilities. This largely means that any energy project with any parts from China, or a company with ties to China, would not be eligible. This would go into effect on December 31, 2025.
- Transferability of tax credits would still be allowed, but only during the narrow window for when projects are eligible for the credits, making it harder for smaller companies to gain access to capital.
- The bill retains a tax credit until 2031 for nuclear power production, advanced manufacturing for certain components, clean fuels, and geothermal heat property.

H.R. 1 also allows fossil fuel companies to pay a higher permitting fee to benefit from faster project permitting. Finally, it would rescind unobligated funds from various federal energy programs. Community Power is not the recipient of any such funding so the reversion of unobligated funds should not have a programmatic impact. The legislation would rescind unobligated funding from the following programs:

- State based energy efficiency training grants
- Department of Energy Loans program
- Tribal Energy Loan Guarantee
- Transmission Facility Financing and Interstate Electricity Transmission Lines
- Interregional and Offshore Wind Planning

Senate Finance Committee Releases Different Approach to Clean Energy Tax Credit Phase Out

On June 16, the Senate Finance Committee released their approach to budget reconciliation. Staff is still assessing the proposal and understanding all the details, but upon initial review it appears to do the following with respect to clean energy tax credits:

- Eliminate 180 days after enactment the \$7,500 New Clean Vehicle Tax Credit, the 30% residential solar and storage tax credit (RCEC), and the \$3,200 home energy efficiency and electrification upgrade tax credit (HEEIC). Solar companies would also be barred from claiming a tax credit for lease agreements for rooftop solar.
- Phase out the ITC and PTC for solar and wind only. Specifically, the proposal would limit the credits to 60% of their value for wind and solar facilities that begin construction in 2026 and 20% of the credit value for wind and solar facilities that begin construction in 2027. There would be no credit in years thereafter.
- The credits for other clean energy technologies, such as geothermal and energy storage, could be claimed through 2033, then 75% in 2034, 50% in 2035, and 0% in 2036.
- While the Senate Finance proposal maintains the start of construction standard and would phase down the credits for wind and solar facilities only, it appears to apply complex new FEOC restrictions to all clean energy technologies. Specifically, to be eligible for the ITC or PTC, any eligible clean energy facility that begins construction after December 31, 2025, could not receive material assistance from a prohibited foreign entity. Likewise, the taxpayer could not be a prohibited foreign entity. Material assistance appears to be defined to mean a certain cost ratio of components that come from a prohibited foreign entity in a project. There are different ratios for different technologies. For example, solar energy components from prohibited foreign entities like China could not have a ratio of more than 50% in 2026, 40% in 2027, 30% in 2028, 20% in 2029, and 15% in 2029. There appears to be safe harbor language for contracts entered into before June 16, 2025, and placed into service before January 1, 2030; these projects could be excluded from the material assistance provisions.

Like H.R. 1, the Senate proposal also modifies a tax credit for nuclear power and restricts a tax credit for clean hydrogen. The Senate version would create a new America First Energy Policy that would extend and modify a clean fuel production tax credit and would make changes to tax applicable to hydrogen storage and carbon capture, among other things.

The intended goal is for the House and Senate to agree to budget reconciliation legislation such as H.R. 1 or the Senate Finance Committee proposal by July 4. It is a fluid situation, and much could change in the interim.

Several Congressmembers Introduce Alternative Energy Tax Credit Proposals

On May 9, a group of majority party members of the House of Representatives introduced the Certainty for Our Energy Future Act (<u>HR 3291</u>) as an alternative approach to changing the ITC and PTC. Specifically, the legislation would end the ITC and PTC for solar and wind only by 2031. It would maintain the tax credits into the 2030s for other technologies, like energy storage and geothermal. The legislation would also maintain the start of construction standard for ITC eligibility, includes safe harbor language for existing projects, and would impose less restrictive foreign sourcing restrictions. It has been referred to the House Ways & Means Committee for a hearing.

Another bill introduced by four members of the majority party – The Ending Intermittent Subsidies Act (<u>HR 2838</u>) would phase out the ITC and PTC for wind and solar, and impose a placed in-service standard. It has been referred to the House Ways & Means Committee.

Table 1. Summary of Federal Proposals on Utility Scale Project Tax Credits

	Current Law	Certainty for Our Energy Future Act (HR 3291)	Ending Intermittent Energy Subsidies Act (HR 2838)	One Big Beautiful Bill Act (HR 1)	Senate Finance Committee
Sponsor	N/A	Reps. Garbarino (NY-2), Valadao (CA-22), Newhouse (WA-4), & Amodei (NV-2) Reps. Goldan (TX-12), Palmer (AL-6), Weber (TX-14), & Fluger (TX-11)		Rep. Arrington (Tx-19)	Senate Finance Committee
Status	30% tax credit for clean energy projects based either on a project's total investment or the electricity produced	Referred to the House Ways & Means Committee	Referred to the House Ways & Means Committee	Passed the House on May 22 on a 215-214 vote	Published June 16
Preference	Preferred	Second preference	Third preference	Least preferred	Under review
Tax Credit Sunset	2032 or when the electric sector GHG emission fall 25% below 2022 levels, whichever is	Wind and solar credits end December 31, 2030. There is a safe harbor provision for projects for projects that have, or will	Wind and solar credits only are phased out: • 80% credit value in 2026 • 60% 2027 • 40% 2028	Can't claim tax credit for any technology if: Construction begins 60 days after the date of enactment	Wind and solar will be phased out: • 60% credit value in 2026 • 20% in 2027 • 0% in 2028 and thereafter

	later, followed by the following phase out: • 75% of credit value following second year • 50% third year • 0% fourth year	soon, start construction based on current IRS guidance.	20% 20290% 2030	or The project is placed into service after Dec 31, 2028	All other clean energy technologies would be phased out: • 75% in 2034 • 50% in 2035 0% in 2036 and thereafter
Tax Attachment Point	Start of construction	Start of construction	Placed into service for ITC and year of production for PTC	Both	Start of construction
Foreign Entity of Concern (FEOC) Restrictions A FEOC is China, Russia, Iran, and North Korea	None	Modest restrictions would be imposed 6 months after the Treasury Department issues guidance. Specifically, a taxpayer could not be a disqualified company that is created under the laws of, or controlled by, a FEOC.	None	Significant restrictions would be imposed 1 year after enactment. Generally, the taxpayer of a project could not receive "material assistance" – including component parts – from a FEOC. A taxpayer could also not be deemed to be influenced or controlled by any FEOC.	Significant restrictions would be imposed beginning December 31, 2025 for any facility, not just wind and solar. Generally, a taxpayer could not receive material assistance from a prohibited foreign entity.
Transferability	Allowed	Allowed	Allowed	Allowed	Cannot transfer to specified foreign entities
Domestic Content & Energy Community adders	10%	Maintained	Maintained	Maintained	Maintained

III. Energy Project Development on Public Lands

Executive actions have caused the Bureau of Land Management (BLM) to pause permitting for renewable energy projects

The Unleashing American Energy <u>Executive Order</u> (EO) revoked an EO from 2021 called the <u>Tackling the Climate Crisis at Home and Abroad</u> (EO #14008). The BLM was relying on the 2021 EO to prioritize the permitting of renewable energy – like solar – on federal lands. By revoking the prior EO, and by uplifting the development of fossil fuels, in

particular, the new EO deprioritizes the development of renewable energy and energy storage on federal land. Concurrently, the Department of Interior, which oversees BLM, issued a 60 day pause authorizing any renewable energy projects. Community Power has learned that the permitting pause – for solar at least – is no longer in effect and projects are still being approved. However, BLM may not be approving the projects at an expeditious rate given the Administration's priority permitting focus on traditional energy projects. As a potential positive sign, the BLM recently announced approval of a solar project in Arizona. Community Power has a power purchase agreement (PPA) for a large solar PV and battery project largely sited on BLM land.

IV. Potential Impacts to Community Power's Long-Term Renewable Energy Portfolio

Community Power staff are closely monitoring any potential effects of the aforementioned actions on Community Power's existing portfolio of long-term contracts under development as well as projects in Community Power's negotiation pipeline.

With respect to tariffs, Community Power notes that it is challenging for both buyers and sellers of renewable energy to assess the market impacts of tariffs until trade discussions settle. However, staff is in regular contact with counterparties to understand any impacts on project economics or the potential for delays to construction due to challenges with securing supply with minimal tariff risks. Fortunately, two-thirds of the forecasted renewable MWhs under contract, but not yet operational are in the later stages of development, having secured construction financing, onshored key equipment and/or commenced construction, effectively mitigating the risk of new tariffs. For those projects that are in earlier stages of development, staff will continue to work closely with developers to track any risks to project viability. For new contracting opportunities, staff are prioritizing projects that are better positioned to mitigate tariff exposure due to developer-specific procurement and project financing strategies.

With respect to the proposed modifications to existing clean energy tax credits, the final outcome is unclear, as there are several steps left in the Congressional process. The House of Representatives passed H.R. 1 as described in Section II of this report and the Senate Finance Committee has published their preferred approach. The Senate is aiming to adopt their version of a budget reconciliation bill by July 4, though that is an uncertain deadline. If the Senate approves a modified version of HR 1 – or a different legislative vehicle entirely – then the House will need to vote on the bill again. Similar to the assessment of tariff impacts, approximately two-thirds of the forecasted renewable energy volume under development in our contracted portfolio is from either projects under construction or those having met the construction start safe harbor provisions (i.e. meeting a 5% threshold of capital investment delivered or stored). Those projects are not anticipated to be affected by modifications to the rules on tax credit eligibility, whether under H.R. 1 or the bill proposed by the Senate Finance Committee.

With respect to our contracted energy storage projects, the Senate's version of the bill appears to explicitly allow energy storage assets to capture the full ITC with the initial reduction not occurring until 2034 and be safe harbored from the FEOC restrictions if the project had a contract before June 16 of this year. However, the Senate's FEOC

restrictions would likely have a material impact to the eligibility of the ITC for those projects not having a contract at this time. Staff is investigating to what extent the FEOC composition ratio thresholds (e.g. 50% in 2026) under the Senate's version can be met with currently anticipated supply chains for battery energy storage and other technologies. Regardless of technology, it is too soon to draw conclusions on the likely impacts to project costs and viability under any new tax credit for any resource that has not met the proposed safe harbor requirements. With several more weeks to go in the Congressional process, it is probable that the final budget reconciliation bill may be altered further, as the situation and dynamics evolve.

Finally, regarding the permitting pause on BLM land, in May the Board approved an amendment for Community Power's PPA with Primergy's Purple Sage project, a 400 MW solar and storage project sited largely on BLM land. The amendment extends the guaranteed commercial operation date by a year into 2028 in exchange for other adjustments to terms to increase the project's value to Community Power's ratepayers. In the meantime, staff will continue to monitor the progress made on project permitting and development and will see if the recently approved PV project in Arizona signals good news for permitting approvals for Purple Sage.

Staff have conducted a project-by-project scenario analyses of Community Power's developing portfolio to stress test for project delays or potential project failure and have concluded that Community Power remains on track meet its clean energy target of 100% by 2035 as well as the interim target of 75% by 2027. Staff will provide additional updates on Community Power's pathway to 100% clean energy to the Board and the CAC in Q4 2025.

FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

This item was presented at the June 12, 2025, Community Advisory and Finance Risk Management Committee meetings. The Committees received and filed the update.

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

TO: Board of Directors

FROM: Chandra Pugh, Senior Director of People Operations and

Administration

VIA: Karin Burns, Chief Executive Officer

SUBJECT: AB 2561 – Status of Vacancies, Recruitment and Retention Efforts

DATE: June 26, 2025

RECOMMENDATION:

Recommend the Board hold a public hearing, receive comments, and accept report on the status of Community Power employee vacancy rates and recruitment and retention efforts.

BACKGROUND:

Assembly Bill (AB) 2561 (McKinnor) amended the Myers-Milias-Brown Act (MMBA) to add Government Code Section 3502.3, which created a new obligation for public agencies to present the status of vacancies and recruitment and retention efforts. The public hearing must be held at least once per fiscal year prior to adopting an annual budget. During the hearing, the public agency shall identify any necessary changes to policies, procedures, and recruitment activities that may lead to obstacles in the hiring process. The law also allows recognized employee organizations, which Community Power does not have, an opportunity to present at the public hearing. The new law took effect on January 1, 2025, and applies to all public agencies.

ANALYSIS AND DISCUSSION:

Status of Job Vacancies

For the Fiscal Year 2024-2025, thirty-one vacancies have been filled, three are currently open, and three were not filled, as shown in Table 1 below. The three current vacancies are: Chief Commercial Officer, Community Outreach Representative (Part-Time) and Senior Origination Associate. For the three positions that were not filled, the hiring managers determined at the time that other operational needs took priority over filling those positions.

Community Power did encounter difficulties in filling the Rates Analyst and Origination Manager positions. Due to the specification of these roles, the candidates that applied did not meet the role requirements which resulted in a limited qualified applicant selection for the positions. Human Resources (HR) recommended that both positions be reposted with either a lower or higher salary grade. The Origination Manager position was reposted as a Senior Origination Associate and is in the process of being filled. For the Rates Analyst position, the position was reposted as a Senior Rates Analyst and the candidate has been selected and is in the final hiring stage.

Table 1

Part Control			Company of the Compan	Reason
				For
Position	Department	Posted	Hired	Vacancy
Community Engagement Associate	Public Affairs	2/15/2024	Yes	Budgeted
Sr. Settlements Analyst	Power Services	2/21/2024	Yes	Budgeted
Senior Strategic Policy Manager	Regulatory Affairs	3/27/2024	Yes	Budgeted
Programs Operations and Proposal Manager	Programs	3/28/2024	Yes	Budgeted
Marketing Manager	Public Affairs	4/9/2024	Yes	Budgeted
Data Scientist	Data Analytics & IT	5/14/2024	Yes	Budgeted
Data Engineer	Data Analytics & IT	5/14/2024	Yes	Budgeted
IT Systems Engineer	Data Analytics & IT	5/16/2024	Yes	Budgeted
Human Resources Coordinator	Human Resources	7/1/2024	Yes	Budgeted
Program Manager	Programs	7/1/2024	Yes	Budgeted
Sr. Power Contracts Data Analyst	Power Services	7/8/2024	Yes, Senior Quantitative Energy Analyst	Budgeted
Senior Program Manager - REN	Programs	7/12/2024	Yes	Budgeted
Senior Program Manager - REN	Programs	7/12/2024	Yes	Budgeted
Public Outreach Coordinator	Public Affairs	7/16/2024	Yes	Backfill
Origination Manager *	Power Services	7/16/2024	No, reposted as Senior Origination Associate	Budgeted
Director of Portfolio Management	Power Services	7/22/2024	Yes	Budgeted
Programs Marketing Manager - REN	Public Affairs	8/1/2024	Yes	Budgeted
Attorney	Legal	8/7/2024	Yes, (1) Assistant General Counsel, (1) Senior Counsel	Budgeted
Finance Manager - REN	Finance	8/13/2024	Yes	Budgeted
Rates Analyst*	Customer Operations	8/13/2024	No, reposted as Senior Rates Analyst	Budgeted
Sr. Cyber Security and Compliance Analyst *	Data Analytics & IT	8/16/2024	Yes, as Senior Cyber Security Analyst	Budgeted
IT Systems Analyst	Data Analytics & IT	10/16/2024		Budgeted
Director of IT and Data Analytics*	Data Analytics & IT	10/31/2024	Yes, as Associate Director of IT and Data Analytics	Backfill
Senior Program Associate	Programs	12/17/2024		Budgeted
Power Contract Coordinator	Power Services	1/23/2025	Yes	Budgeted
Strategic Finance Manager	Finance	2/6/2025	Yes	Budgeted
Procurement Analyst	Finance	2/14/2025	Yes	Budgeted
Senior Rates Analyst	Customer Operations	2/20/2025	Candidate selected, final hiring stage	Budgeted
Senior Origination Associate	Power Services	2/26/2025	No, will need to repost	Budgeted
Executive Assistant	Operations	3/21/2025	Yes	Backfill
Community Engagement Coordinator	Public Affairs	4/3/2025	Yes	Budgeted
Chief Commercial Officer	Executive	4/9/2025	Still posted	Backfill
Data Analyst	Data Analytics & IT	4/11/2025	Yes	Budgeted
Community Outreach Representative	Public Affairs	5/21/2025	Still posted	Backfill
Data Engineer	Customer Operations		Not posted	Budgeted
Senior Key Account Analyst	Customer Operations		Not posted	Budgeted
Sr. Load Forecast Analyst	Power Services		Not posted	Budgeted

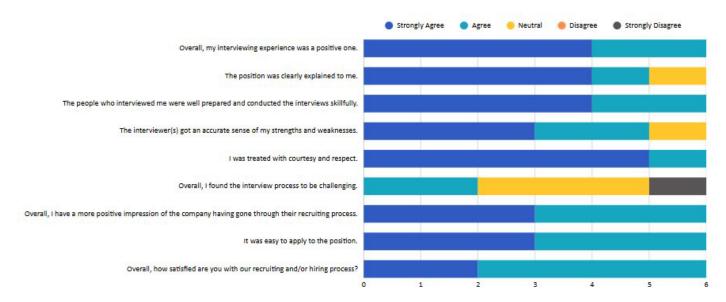
Recruitment and Retention Efforts

The recruitment process includes three interview stages including a virtual and two inperson panel interviews. At the end of the recruitment process for a position, HR deploys a candidate engagement survey to provide feedback regarding the recruitment process. As shown in Table 2 below, the feedback from candidates regarding the recruitment process has been positive.

There has been very little employee turnover at Community Power this past fiscal year. Of the 31 vacancies, 27 were new positions. Community Power's retention efforts include

offering competitive wages, 10% of base pay employer contribution to employee Money Purchase Plan retirement account, generous vacation and sick time, 11 paid holidays including a winter break, and a professional development stipend. Because Community Power has been highly successful in filling vacant positions this past fiscal year and retaining its employees, no changes are being recommended to its recruitment process and retention efforts.

Table 2



FISCAL IMPACT:

N/A

COMMITTEE REVIEW:

This item was presented to the Finance Risk Management Committee on June 12, 2025. The Committee members unanimously recommended the Board hold a public hearing on this matter.

ATTACHMENTS:

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 13

TO: Board of Directors

FROM: Dr. Eric Washington, Chief Financial Officer

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Recommend Board Approval of Resolution No. 2025-06, adopting the

FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and FY

2026-2030 Capital Investment Plan

DATE: June 26, 2025

RECOMMENDATION:

Recommend Board Approval of Resolution No. 2025-06, adopting the FY 2025-2026 Operating Budget, the FY 2025-2026 Capital Budget, and the 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 Expense Estimate	Baseline budget is	Board Provious	Committee Review SDCP Board Approval	Mid-year budget review (February)
Develop financial	developed SDCP Board Preview (Information Item)		SDCP Board Approval	Budget amendment
plan for credit rating in 3-vears				as necessary

Table 2 illustrates the proposed FY 2025-2026 budget in comparison to Community Power's budgets from prior years.

Table 2. Community Power Budget History

Operating Budget	Ne	t Revenues	Tot	al Expenses	Ne	et Position
FY 2020-21 Amendment	\$	26,286,909	\$	34,135,000	\$	(7,848,091)
FY 2021-22 Amendment	\$	378,053,506	\$	342,177,063	\$	35,876,443
FY 2022-23 Amendment	\$	929,791,929	\$	772,078,709	\$	157,713,220
FY 2023-24 Amendment	\$	1,304,274,067	\$	1,070,891,284	\$	233,382,783
FY 2024-25 Amendment	\$	1,221,258,172	\$	1,187,090,169	\$	34,168,003
FY 2025-26 Proposed	\$	1,199,619,794	\$	1,035,006,277	\$	164,613,302

ANALYSIS AND DISCUSSION:

The proposed FY 2025-2026 operating budget includes net operating revenue of \$1,199,619,579 and total expenses of \$1,035,006,277, resulting in net position of \$164,613,302.

The proposed FY 2025-2026 capital budget includes revenue and expenses of \$54,545,636 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 \$344.3 million in investments. The first year of the FY 2026-2030 CIP comprises the FY 2025-2026 capital budget. Additionally, \$11.2 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 with adjustments of 3.8% for Cost of Living¹ increases and up to 5% for potential merit increases, as authorized under the Board-approved Total Compensation Policy, 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 Plan (CIP)

In FY 2025-2026 Community Power is continuing its Capital Investment Plan (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

¹ The SDCP Total Compensation Policy, adopted March 23, 2023, bases the Cost of Living (COLA) from the San Diego Consumer Price Index for all Urban consumers calculated on a rolling 12-month basis from the Bureau of Labor Statistics in January of the calendar year in which the COLA increase will take effect.

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 2025-2026 budget results in a net position of \$164,613,302.

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 2025-2026 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 Plan (Transfer Out)	4.7	18.2	22.2
Total Expenses	1,071.0	1,187.1	1,035.0
Net Position	233.3	34.2	164.6
			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-Yea				
	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding							
Regional Energy Network		31.9	59.5	51.4	42.0	43.7	228.6
DAC-GT	(0.1)	0.6	0.5	0.5	0.5	0.5	2.4

CDFA	0.7		_	_	_	-	-	0.7
Equitable Building	4.4							4.4
Decarbonization	1.4		-	-	-	-	-	1.4
Subtotal	2.0		32.5	60.0	51.9	42.5	44.2	233.0
Internal Funding								
Energy Efficiency	0.0		-	-	-	-	-	0.0
Solar Battery Savings	3.2		18.8	11.1	10.4	8.3	8.5	60.3
Pilot Programs	2.5		-	-	-	-	-	2.5
Grants	0.2		1.3	-	-	-	-	1.5
DER	0.0		-	-	-	-	-	0.0
Flexible Load	0.3		0.3	0.6	0.6	0.8	0.7	3.3
IT Projects	2.5		1.5	-	-	-	-	4.0
Community Education		-	0.0	_	-	-	-	0.0
App Assistance	0.3		-	_	-	-	-	0.3
Program Evaluation		-	0.3	-	-	-	-	0.3
Other CIP		-	-	7.4	8.7	11.2	11.7	39.1
Subtotal	9.2		22.2	19.1	19.7	20.3	20.9	111.3
CIP Expense Total	11.2		54.7	79.1	71.6	62.8	65.1	344.3

Amounts displayed in millions, \$

The proposed budget now includes an adjustment to our Capital Investment Plan (CIP) funds. We've shifted some of the remaining budget allotment from in-house personnel to professional services, which we expect will lead to long-term savings on personnel costs. We've also updated the carryforward funds. These revisions make the proposed budget more current.

Table 5. Community Power FY 2025-2026 CIP Draft vs Proposed

	Draft CIP FY26	Proposed CIP FY26	FY26 Draft vs. Proposed
External Funding			
Regional Energy Network	228.7	228.6	0.1
DAC-GT	2.7	2.4	0.3
CDFA	0.5	0.7	(0.2)
Equitable Building Decarbonization	1.5	1.4	0.1
Other	0.9	_	0.9
Subtotal	234.3	233.0	1.3
Internal Funding			
Energy Efficiency	-	0.0	(0.0)
Solar Battery Savings	59.8	60.3	(0.5)
Pilot Programs	1.7	2.5	(0.8)
Grants	1.5	1.5	(0.0)
DER	0.1	0.0	0.1
Flexible Load	3.1	3.3	(0.2)
IT Projects	3.5	4.0	(0.5)
Community Education	-	0.0	(0.0)
App Assistance	0.1	0.3	(0.2)
Program Evaluation	0.3	0.3	0.1
Other CIP	0.2	39.1	(38.9)
Subtotal	70.3	111.3	(41.0)
CIP Expense Total	304.6	344.3	(39.7)

Amounts displayed in millions, \$

Table 6. Community Power FY 2025-2026 Budget Draft vs Proposed

Category Draft Budget FY		aft Budget FY26	Proposed Budget FY26		FY26 Draft vs Propose Difference	
Revenue						
Gross Ratepayer Revenues	\$	1,220,986,849	\$	1,220,986,849	\$	-
(Less 1.75%* Uncollectible)	\$	(21,367,270)	\$	(21,367,270)	\$	-
Total	\$	1,199,619,579	\$	1,199,619,579	\$	-
Expenditures						
Cost of Energy	\$	956,690,816	\$	956,690,816	\$	-
General and Administration	\$	5,841,527	\$	5,841,527	\$	-
Marketing and Outreach	\$	2,647,481	\$	2,647,481	\$	-
Personnel Costs	\$	21,115,541	\$	21,115,541	\$	-
Professional Services and Consultants	\$	24,647,755	\$	24,647,755	\$	-
Programs	\$	-	\$	-	\$	-
Total	\$	1,010,943,119	\$	1,010,943,119	\$	-
Debt Service	\$	1,892,558	\$	1,892,558	\$	-
CIP	\$	21,353,333	\$	22,170,600	\$	817,267
Net Position	\$	165,430,569	\$	164,613,302	\$	(817,267)

FISCAL IMPACT:

The proposed FY 2025-2026 budget is expected to result in a net position of \$164.6 million, with resulting total cash reserves of \$572.0 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 \$22.2 million into the agency's Capital Investment Plan. 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.

COMMITTEE REVIEW:

This item was presented at the Finance and Risk Management Committee on June 12, 2025. The Committee recommended advancing this item to the Board for approval.

ATTACHMENTS:

- A: Draft FY 2025-2026 Operating Budget Book (Jun 12 redlined)
- B: Draft FY 2026-2030 Capital Investment Plan (Jun 12 redlined)
- C: A Resolution of the Board of Directors of San Diego Community Power Adopting the Fiscal Year 2025-2026 Operating Budget (Exhibit A), the Fiscal Year 2025-2026 Capital Budget, and the Fiscal Year 2026-2030 Capital Investment Plan (Exhibit B)

ITEM 13 ATTACHMENT A



2025 2026



SAN DIEGO COMMUNITY POWER

Operating Budget Fiscal Year 2025-2026

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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

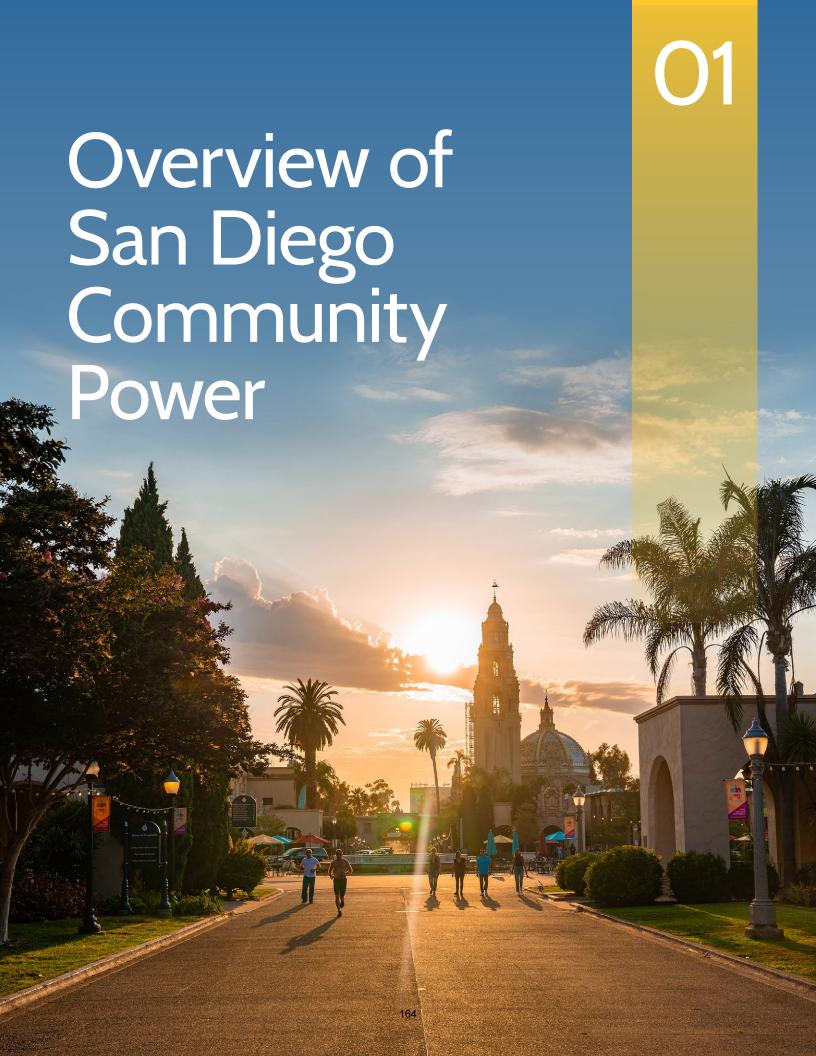
As we look ahead, our focus remains on driving measurable impact: accelerating the region's clean energy transition, supporting local climate goals and building a more just and resilient energy system. With the continued leadership of our Board of Directors, Community Advisory Committee and dedicated 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

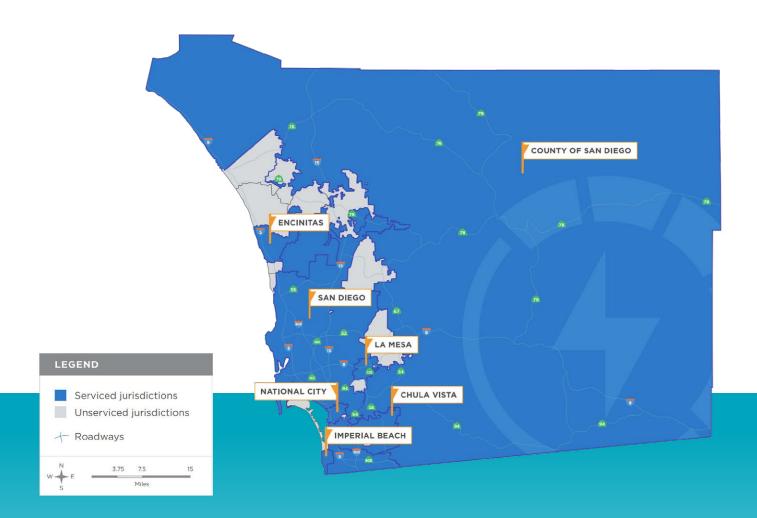




Serviced Communities

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.

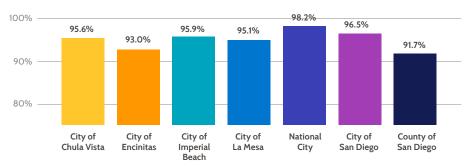
FIGURE 3. SAN DIEGO COUNTY POPULATION

	Sa	ın Diego Cou	nty Populatio	on	
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

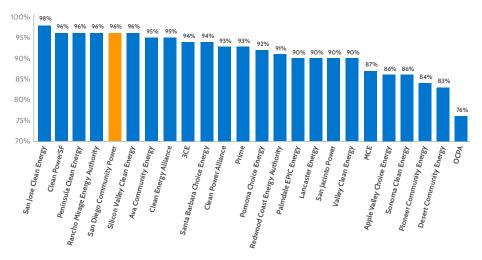
FIGURE 4. PARTICIPATION BY JURISDICTION



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

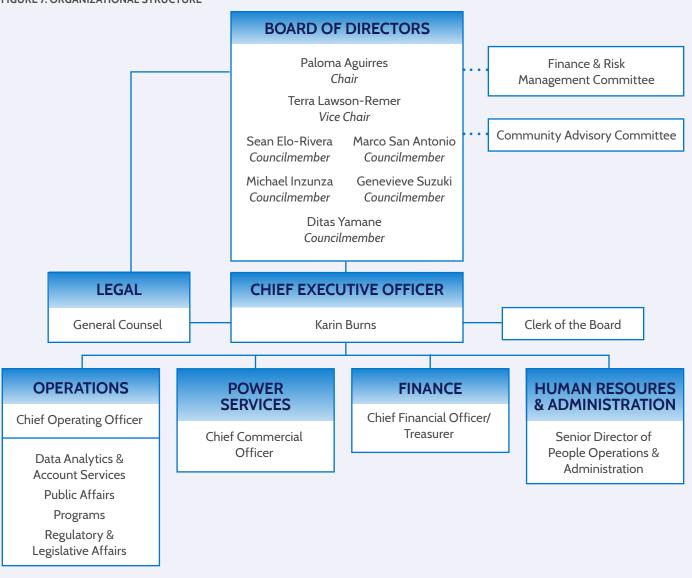
In September 2019, the cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa adopted an ordinance and resolution to form San Diego Community Power, a California Joint Powers Authority (JPA). In 2021, National City and the County of San Diego voted to join Community Power.

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 <u>Community</u> <u>Power Budget Policy</u> 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

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.

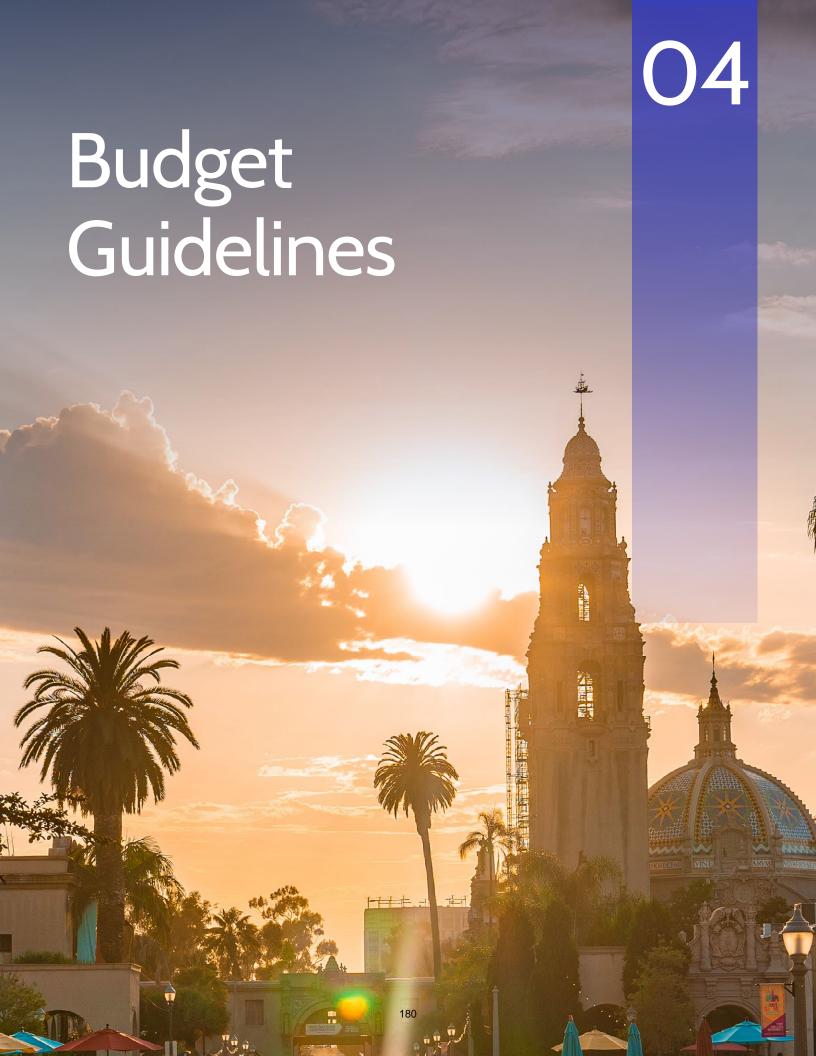
Together, these efforts create a strong feedback loop between our agency and the public, ensuring our budget reflects both fiscal responsibility and community values and that every customer has a voice in building a clean, affordable and equitable energy future for our region.

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 <u>22.2</u>
Total Expenses	1,071.0	1,143.9	1,034.2 <u>1,035.0</u>
Net Position	233.3	34.0	165.4 <u>164.6</u>

^{*}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

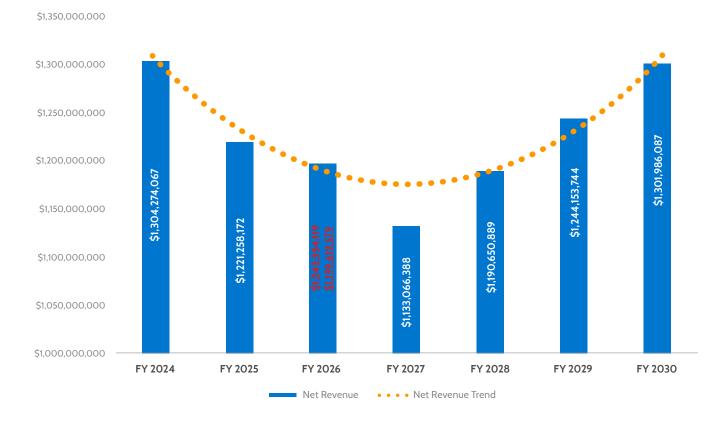


Table 2 summarizes the revenues for the FY24 Amended Budget, FY25 Amended Budget and FY26 Proposed Operating Budget.

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 <u>22.2</u>
Total Expenses	1,071.7	1,147.1	1,034.2 <u>1,035.0</u>

^{*}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 <u>87.0</u>	86.0 <u>94.0</u>

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

FIGURE 26. COMMUNITY POWER'S DEPARTMENTS

Executive Team	2	Operation	ns	Human Resources and Administration		Finance	
Power Services		Program	s	Regulato and Legis		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 2026-2030 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 one-time projects rather than recurring projects.

The first year of the FY 2025-2029 2026-2030 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 \$54.7 million and the FY 2025-2029 2026-2030 CIP total \$304.3 \$344.3 million. Additionally, \$10.3 \$11.2 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 <u>9.2</u>	-	21.4 <u>22.2</u>
Regional Energy Network ^[2]	0.3 <u>-</u>	31.8 <u>31.9</u>	31.8 <u>-</u>
DAC-GT	0.5 (<u>0.1)</u>	0.3 <u>0.6</u>	0.3 <u>-</u>
CDFA	0.5 <u>0.7</u>	-	-
Equitable Building Decarbonization	1.5 <u>1.4</u>	-	-
Other	-	-	0.9 _
CIP Revenue	10.3 <u>11.2</u>	32.1 <u>32.5</u>	54.4 <u>22.2</u>

^{*}Amounts displayed in millions of dollars

⁽¹⁾ The carry forward amount represents actual financial data through March 31, 2025, updated April 30, 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<u>, and funded programs</u> will be available across SDG&E service territory.

TABLE 6.1. 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 Network ^[2]	2.1	1.8 <u>2.1</u>	0.3 _	31.8 <u>31.9</u>	59.5	51.4	42.0	43.7	228.7 228.6
DAC-GT	0.9	0.4 <u>1.0</u>	0.5 (<u>0.1)</u>	0.3 <u>0.6</u>	0.5	0.5	0.5	0.5	2.7 <u>2.4</u>
CDFA	0.7	0.2 <u>-</u>	0.5 <u>0.7</u>	-	_	-	-	-	0.5 <u>0.7</u>
Equitable Building Decarbonization	1.5	<u>0.1</u>	1.5 <u>1.4</u>	-	-	-	-	-	0.5 <u>1.4</u>
Other	-	-	-	0.9 <u>-</u>	-	-	-	-	0.9 <u>-</u>
Subtotal	5.2	2.4 <u>3.2</u>	2.8 <u>2.0</u>	33.0 <u>32.5</u>	60.0	51.9	42.5	44.2	234.4 <u>233.0</u>
Internal Funding									
Solar Battery Savings	10.6	7.9 <u>7.4</u>	2.7 <u>3.2</u>	18.8	11.1	10.4	8.3	8.5	59.8 <u>60.3</u>
Energy Efficiency	0.3	0.3	0.0	-	-	-	-	-	0.0
Pilot Programs	3.0	1.3 <u>0.5</u>	1.7 <u>2.5</u>	-	-	-	-	-	1.7 <u>2.5</u>
Grants	0.8	0.3 <u>0.6</u>	0.7 <u>0.2</u>	0.8 <u>1.3</u>	-	-	-	-	1.5
DER	0.1	0.0 <u>0.1</u>	0.1 <u>0.0</u>	_	-	-	_	-	0.1 <u>0.0</u>
Flexible Load	0.6	0.5 <u>0.3</u>	0.2 <u>0.3</u>	0.3	0.6	0.6	0.8	0.7	3.1 <u>3.3</u>
IT Projects	2.6	0.6 <u>0.1</u>	2.0 <u>2.5</u>	1.5	-	-	-	-	3.5 <u>4.0</u>
Community Education	0.1	0.0 <u>0.1</u>	0.0 <u>-</u>	0.0	-	-	-	-	0.0
Program Evaluation	-	-	-	0.3	-	-	-	-	0.3
Application Assistance	0.3	Ξ	0.3	=	Ξ	=	=	Ξ	<u>0.3</u>
Other	-	-	-	0.2 <u>-</u>	<u>7.4</u>	<u>8.7</u>	<u>11.2</u>	<u>11.7</u>	0.2 <u>39.1</u>
Subtotal	15.4 <u>18.4</u>	11.1 <u>9.2</u>	7.5 <u>9.2</u>	21.4 <u>22.2</u>	11.7 <u>19.1</u>	11.0 <u>19.7</u>	9.1 <u>20.3</u>	9.2 20.9	69.9 111.3
CIP Expense Total	20.6 <u>23.6</u>	13.5 <u>12.5</u>	10.3 <u>11.2</u>	54.4 <u>54.7</u>	71.7 <u>79.1</u>	62.9 <u>71.6</u>	51.6 <u>62.8</u>	53.4 <u>65.1</u>	304.3 344.3

^[1] The carry forward amount represents actual financial data through March 31, 2025, updated April 30, 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 Years 2024–2027, it is reflected in this table as anticipated spending by fiscal year.

Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2025-2029 2026-2030 Capital Improvement Investment Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$304.3 \$344.3 million

in investments across Community Power member jurisdictions. San Diego County. More detail can be found within the companion FY 2025-2029 FY 2026-2030 Capital Improvement Investment 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.

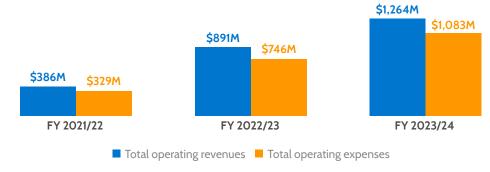


Multiyear Trends

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.

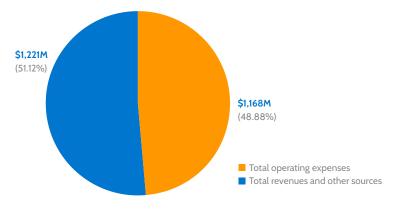
FIGURE 28. OPERATING REVENUES VS. EXPENDITURES



	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 NET POSITION	\$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 <u>1,035.0</u>	967.0	926.4	931.1	957.9
Annual Reserve (Net Position)	165.4 <u>164.6</u>	166.0	264.3	313.0	344.1
Cumulative Net Position	574.9 <u>574.1</u>	741.0 <u>740.1</u>	1,005.3 <u>1,004.4</u>	1,318.3 <u>1,317.5</u>	1,662.40 <u>1,661.6</u>
180-Day Expense	510.0 <u>510.4</u>	486.8	467.3	470.1	483.8
Projected Excess Reserves	64.9 <u>63.7</u>	254.1 <u>253.3</u>	538.0 <u>537.1</u>	848.2 <u>847.4</u>	1,178.6 <u>1,177.7</u>



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)

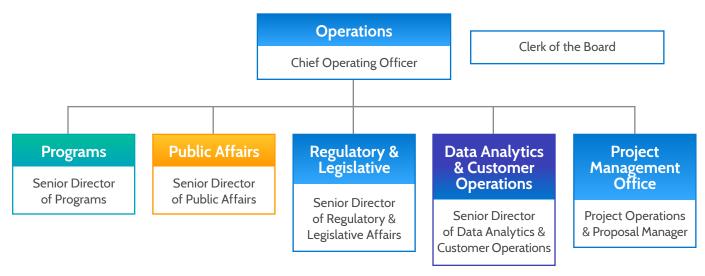
- · Implement new project intake and tracking tools (target: Q2 FY 2025)
- Maintain a cross-functional project schedule (target: update quarterly)
- Implement a team utilization framework (target: Q3 FY 2025)
- Develop and launch a centralized internal dashboard for tracking project and policy updates (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 <u>5.0</u>	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

DEPAR	TMENT	FY25	FY26
POSITI	ONS	Actual	Proposed
Power	Services	16.0	*17.0

^{*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 <u>9.0</u>	*10.0

^{*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 <u>8.0</u>	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

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
IT and Data Analytics	8.0 <u>9.0</u>	

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 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 (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 <u>12.0</u>	*14.0

*5.0 6.0 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	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 <u>1,243.0</u>	1,233.4 <u>1,221.0</u>
(Less 4.5% 1.75% Uncollectible Customer Accounts)	(61.5)	(55.5) <u>(21.8)</u>	(55.5) (<u>21.4)</u>
Net Operating Revenues	1,304.3	1,177.9 <u>1,221.3</u>	1,177.9 <u>1,199.6</u>

^{*}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*

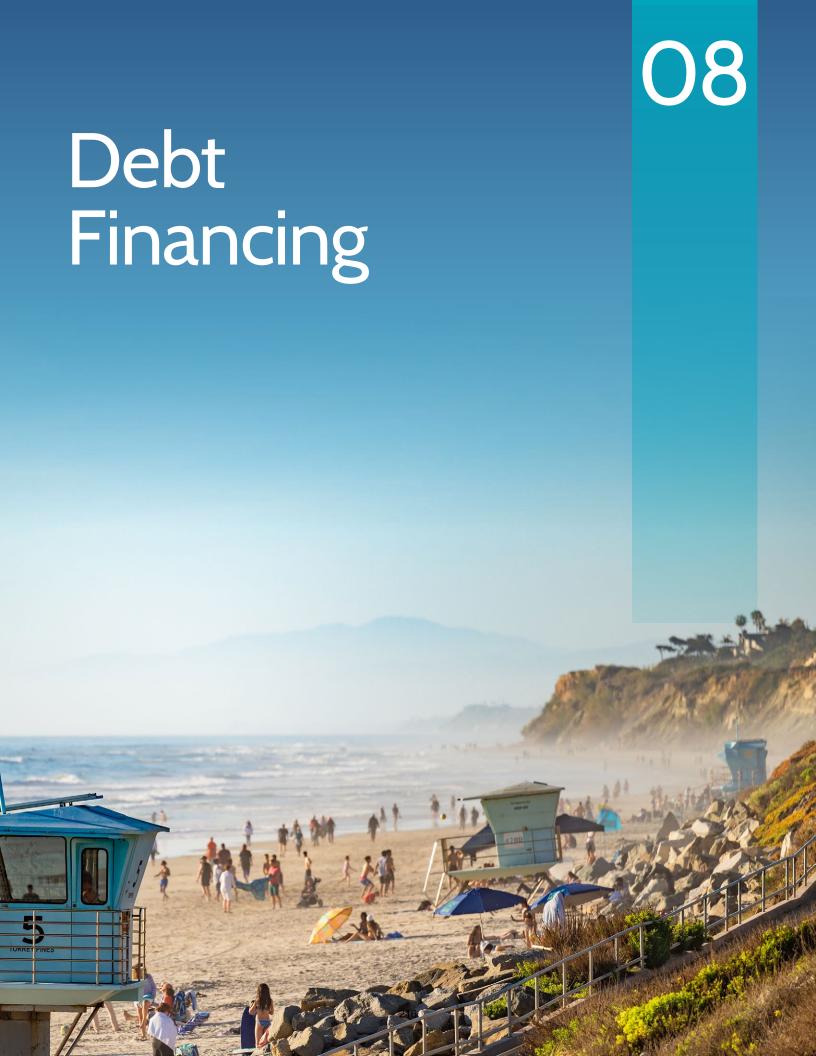
	FY24 Amended	FY25 Amended	FY26 Proposed
Other G & A	5.7	3.6	4.0
Cal CCA Dues	0.4	0.5	0.6
Rent	0.4	0.7	0.9
Partnerships/Sponsorships/Memberships	0.0	0.0	0.0
Insurance	0.1	0.1	0.3
General and Administration	6.6	4.9	5.9

^{*}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.

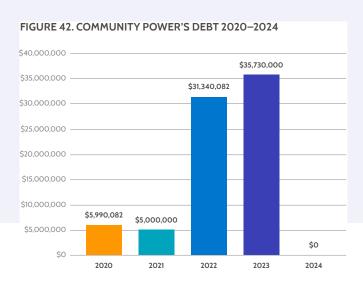
The Debt Policy enables Community Power to issue bonds that will ultimately be subject to Board approval as a separate action. The Debt Policy will help Community Power take advantage of ownership opportunities that may arise, especially in conjunction with state or federal funding that might be available.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

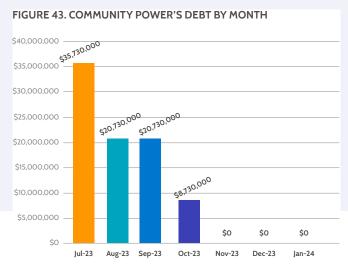
The Debt Policy articulates:

- 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

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);

CPUC – California Public Utility Commission:

a few members have onsite renewable generation.

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.

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*Formerly titled Managing Director Power Services



ITEM 13 ATTACHMENT B



Capital Investment Plan (CIP)
Fiscal Years 2026–2030

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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.

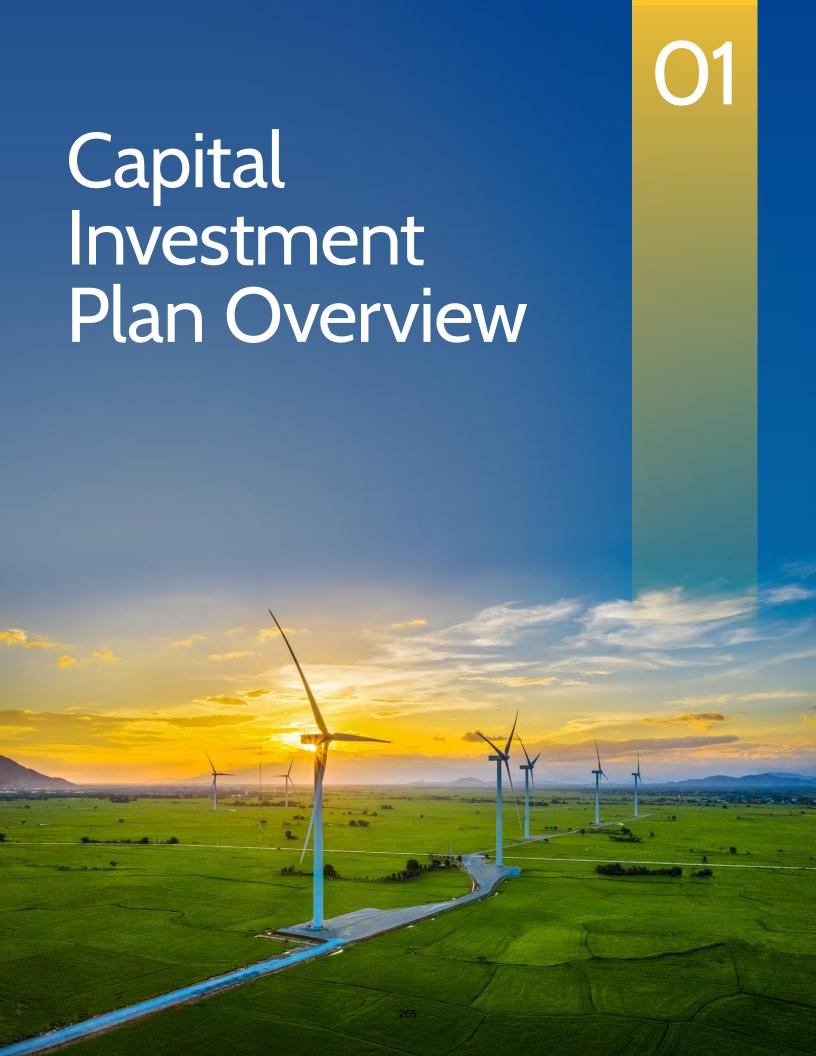
As we look ahead, our focus remains on driving measurable impact: accelerating the region's clean energy transition, supporting local climate goals and building a more just and resilient energy system. With the continued leadership of our Board of Directors, Community Advisory Committee and dedicated 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 <u>9.2</u>	-	21.4 <u>22.2</u>
Regional Energy Network [2]	0.3 <u>-</u>	31.8 <u>31.9</u>	31.8 <u>-</u>
DAC-GT	0.5 (<u>0.1)</u>	0.3 <u>0.6</u>	0.3 <u>-</u>
CDFA	0.5 <u>0.7</u>	-	-
Equitable Building Decarbonization	1.5 <u>1.4</u>	-	-
Other	-	-	0.9 <u>-</u>
CIP Revenue	10.3 <u>11.2</u>	32.1 <u>32.5</u>	54.4 <u>22.2</u>

^{*}Amounts displayed in millions of dollars

^[1] The Carry Forward amount represents actual financial data through March 31, 2025, updated April 30, 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 Years 2024–2027 and funded programs will be available across SDG&E service territory

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.

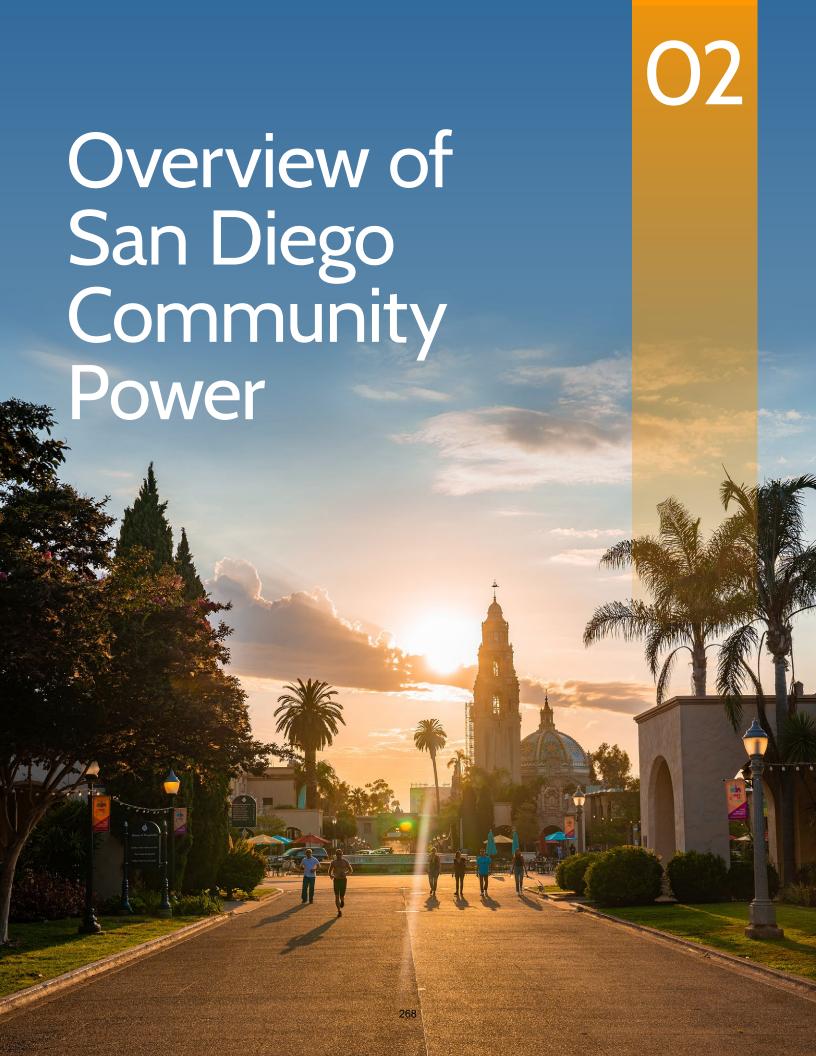
TABLE 2. FY 2026-2030 CIP PROGRAMS AND PROJECTS

	Beginning Bal.	Expenses	Carry Forward [1]	5-Year Budget					
	FY25	FY25	FY25	FY26	FY27	FY28	FY29	FY30	Total
External Funding									
Regional Energy Network ^[2]	2.1	1.8 <u>2.1</u>	0.3 <u>-</u>	31.8 <u>31.9</u>	59.5	51.4	42.0	43.7	228.7 <u>228.6</u>
DAC-GT	0.9	0.4 <u>1.0</u>	0.5 (<u>0.1</u>)	0.3 <u>0.6</u>	0.5	0.5	0.5	0.5	2.7 <u>2.4</u>
CDFA	0.7	0.2 <u>-</u>	0.5 <u>0.7</u>	-	-	_	-	_	0.5 <u>0.7</u>
Equitable Building Decarbonization	1.5	<u>0.1</u>	1.5 <u>1.4</u>	-	-	-	-	-	0.5 <u>1.4</u>
Other	-	-	-	0.9 <u>-</u>	-	-	-	-	0.9 <u>-</u>
Subtotal	5.2	2.4 <u>3.2</u>	2.8 <u>2.0</u>	33.0 <u>32.5</u>	60.0	51.9	42.5	44.2	234.4 <u>233.0</u>
Internal Funding	Internal Funding								
Solar Battery Savings	10.6	7.9 <u>7.4</u>	2.7 <u>3.2</u>	18.8	11.1	10.4	8.3	8.5	59.8 <u>60.3</u>
Energy Efficiency	0.3	0.3	0.0	-	-	-	-	-	0.0
Pilot Programs	3.0	1.3 <u>0.5</u>	1.7 <u>2.5</u>	-	-	-	-	-	1.7 <u>2.5</u>
Grants	0.8	0.3 <u>0.6</u>	0.7 <u>0.2</u>	0.8 <u>1.3</u>	-	-	-	-	1.5
DER	0.1	0.0 <u>0.1</u>	0.1 <u>0.0</u>	-	-	_	_	_	0.1 <u>0.0</u>
Flexible Load	0.6	0.5 <u>0.3</u>	0.2 <u>0.3</u>	0.3	0.6	0.6	0.8	0.7	3.1 <u>3.3</u>
IT Projects	2.6	0.6 <u>0.1</u>	2.0 <u>2.5</u>	1.5	-	-	-	-	3.5 <u>4.0</u>
Community Education	0.1	0.0 <u>0.1</u>	0.0 <u>-</u>	0.0	-	-	-	-	0.0
Program Evaluation	-	-	-	0.3	-	-	-	-	0.3
Application Assistance	0.3	Ξ	0.3	Ξ	Ξ	=	=	=	0.3
Other	-	-	-	0.2 <u>-</u>	<u>7.4</u>	<u>8.7</u>	<u>11.2</u>	<u>11.7</u>	0.2 <u>39.1</u>
Subtotal	15.4 <u>18.4</u>	11.1 <u>9.2</u>	7.5 <u>9.2</u>	21.4 <u>22.2</u>	11.7 <u>19.1</u>	11.0 <u>19.7</u>	9.1 <u>20.3</u>	9.2 <u>20.9</u>	69.9 <u>111.3</u>
CIP Expense Total	20.6 <u>23.6</u>	13.5 <u>12.5</u>	10.3 <u>11.2</u>	54.4 54.7	71.7 <u>79.1</u>	62.9 71.6	51.6 <u>62.8</u>	53.4 <u>65.1</u>	304.3 344.3

¹The 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.

¹¹¹The carry forward amount reviews actual financial data through March 31, 2025, updated April 30, 2025, and will be reconciled at the close of fiscal year 2024-2025.

¹²¹The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Years 2024–2027, 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







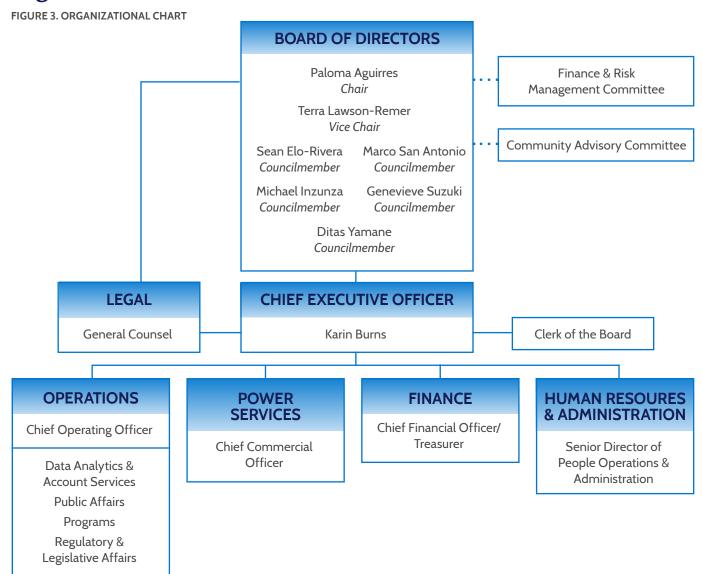








Organizational Structure



03

Capital Investment Plan



Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2026–2030 Capital Improvement Investment Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$304.3 \$344.3 million in investments across Community Power member jurisdictions San Diego County. 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



A global leader inspiring innovative solutions to climate change by powering our communities with 100% clean energy while prioritizing equity, sustainability and high-quality jobs.

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 3. 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.

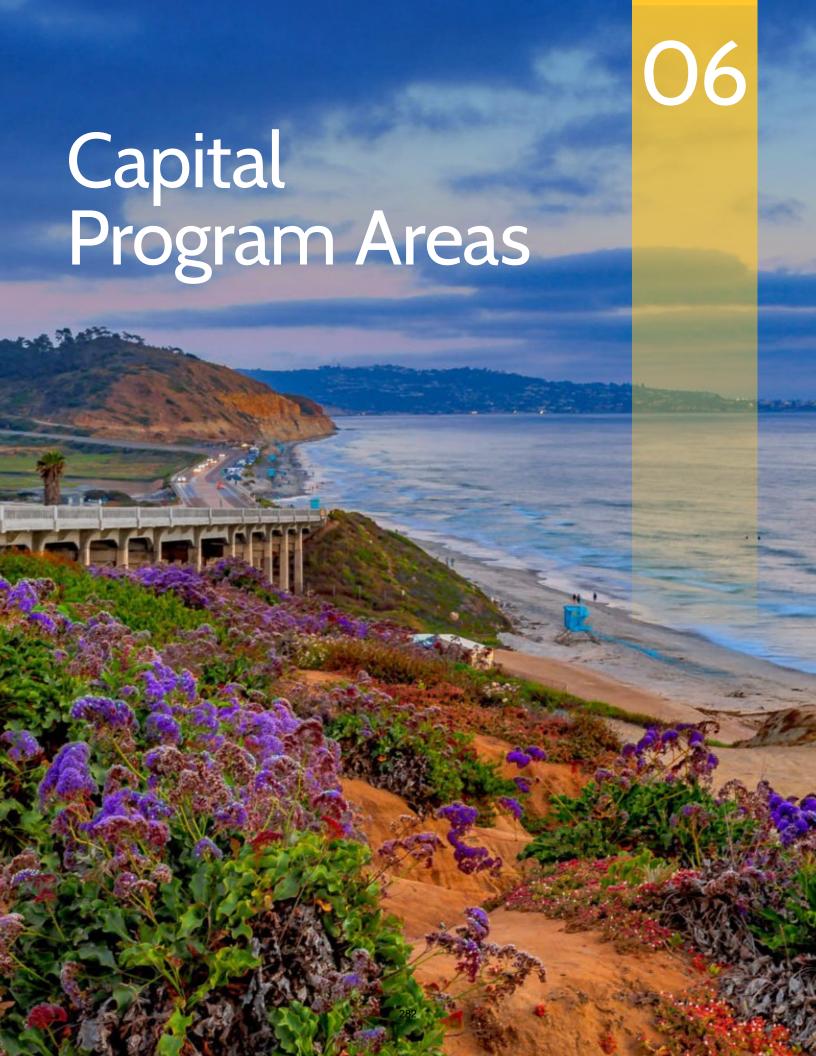
Promoting accessibility

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 4. ENERGY AWARENESS AND EDUCATION PROJECTS

Project	Scope of Work	Carry Forward	FY26
Civic Spark Fellows	Partnership with San Diego State University professor-led student cohorts to expand outreach for key Community Power initiatives and programs while providing workforce development opportunities	-	\$40,000
Equitable Building Decarbonization	The Equitable Building Decarbonization Direct Install 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.	- <u>\$1,400,000</u>	\$466,667 <u>-</u>
Total		- \$1,400,000	\$506,667 <u>\$40,000</u>

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 5. 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.	- <u>\$250,000</u>	\$ 250,000 <u>-</u>
Total		- \$250,000	\$250,000 <u>-</u>

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 6. 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 (\$112,692)	\$310,383 \$589,822
Total		\$ 166,747 * (\$112,692)*	\$310,383 <u>\$589,822</u>

*\$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.

*(112,692) 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 \$589,822 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 7. 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 \$2,330,672	-
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 \$2,530,702	-

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 8. 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 \$248,380	\$ 837,579 \$ <u>1,275,600</u>
Total		\$ 669,088 \$255,047	\$ 837,579 \$1,275,600

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 9. 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 10. 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 \$ <u>89,500</u>	-
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 <u>\$24,778</u>	\$ 37,500 <u>-</u>
Building and Housing Stock Analysis	Develop resources on existing building stock to inform program design	\$52,000	-
Program Evaluation	TBD	\$250,000 <u>-</u>	\$250,000
Total		\$ 52,000 \$114,278	\$ 287,500 \$250,000

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 11. 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 \$3,209,422	\$18,750,000
Total		\$ 2,697,382 \$3,209,422	\$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 12. 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	<u>\$348,414</u>	
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
		<u>\$348,414</u>	

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 13. 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 <u>-</u>	\$31,845,256 \$31,868,547
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 \$690,845	-
Total	,	\$ 889,749 \$690,845	\$31,845,256 \$31,868,547

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 14. 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 15. 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 16. TRANSPORTATION ELECTRIFICATION: MEDIUM- AND HEAVY-DUTY VEHICLES PROJECTS

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 17. 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	\$500,000
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 <u>\$391.467</u>	\$ 567,157 \$ <u>555,000</u>

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	\$83,333	\$916,667
Total	using the ERP system; and a post-implementation review report.	\$2,296,177 \$2,524,800	\$1,483,823 \$1,471,667

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.

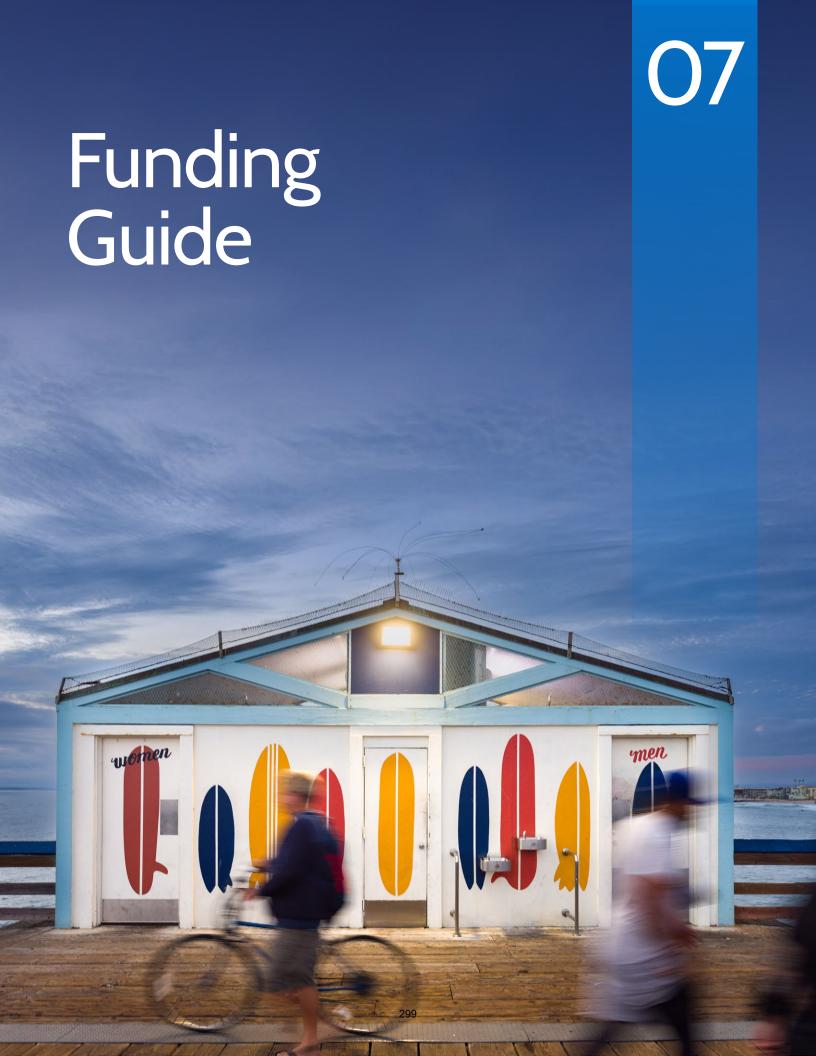
Benefits

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 18. 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.
Distributed Energy Backup Assets (CEC)	The Distributed Electricity Backup Assets (DEBA) Program incentivizes the construction of cleaner and more efficient distributed energy assets that serve as on-call emergency supply or load reduction for the state's electrical grid during extreme events. Projects that may be eligible for incentives include efficiency upgrades, maintenance, and capacity additions to existing power generators, as well as new zero- or low-emission technologies, including, but not limited to, fuel cells or energy storage, at existing or new facilities. All funding recipients under the program shall participate as an on-call emergency resource for the state during extreme events.
Self-Generation Incentive Program—Residential Solar & Storage Equity (CPUC)	To support customer resiliency and grid reliability, the CPUC has authorized funding of \$280 million for SGIP's Residential Solar and Storage Equity budget. This funding includes prioritization of low-income customers to provide bill savings. Paired with the IRA tax credit, the incentive is intended to cover the full system installation cost.
Enabling Electric Vehicles as Distributed Energy Resources (CEC)	The purpose of this solicitation is to fund studies and applied research and development (R&D) projects that support the approved Electric Program Investment Charge 2021–2025 (EPIC 4) Investment Plan's strategic objective to increase the value proposition of distributed energy resources to customers and the grid. This solicitation's research topics fall under the EPIC 4 Transportation Electrification Initiative.

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

ITEM 13 ATTACHMENT C

RESOLUTION NO. 2025-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ADOPTING THE FISCAL YEAR 2025-2026 OPERATING BUDGET, THE FISCAL YEAR 2025-2026 CAPITAL BUDGET, AND THE FISCAL YEAR 2026-2030 CAPITAL INVESTMENT PLAN.

- A. San Diego Community Power ("Community Power") is a joint powers authority formed pursuant to the Joint Exercise of Powers Act, Cal. Gov. Code § 6500 *et seq.*, California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019, and amended on December 16, 2021, ("JPA Agreement").
- B. The JPA Agreement provides that Community Power's fiscal year ("FY") shall be 12 months commencing each year on July 1 and ending on June 30 the following year.
- C. The JPA Agreement further provides that 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.
- D. The Community Power Board proposes to adopt the FY 2025-2026 Operating Budget and the FY 2025-2026 Capital Budget, attached hereto as <u>Exhibit</u> A.
- E. The SDCP Board further proposes to adopt the FY 2026-2030 Capital Investment Plan that provides comprehensive five-year plan for Community Power's capital investment expenditures, attached hereto as Exhibit B.
- F. The FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and the FY 2026-2030 Capital Investment Plan, are based on the reasonable and necessary costs incurred by Community Power to operate and provide electric services, programs, and other offerings to Community Power customers; that the services, programs, and other offerings are reasonable and necessary; and that the costs have a fair and reasonable relationship to the benefit, privilege, service or product provided to the customer.
- **NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of San Diego Community Power as follows:
 - <u>Section 1</u>. The Board of Directors hereby adopts the FY 2025-2026 Operating Budget.
 - <u>Section 2.</u> The Board of Directors hereby adopts the FY 2025-2026 Capital Budget.

<u>Section 3.</u> The Board of Directors hereby adopts the FY 2026-2030 Capital Investment Plan.

<u>Section 4.</u> The Board of Directors finds that the FY 2025-2026 Operating Budget, FY 2025-2026 Capital Budget, and the FY 2026-2030 Capital Investment Plan, are based on the reasonable and necessary costs incurred by Community Power to operate and provide electric services, programs, and other offerings to Community Power customers; that the services, programs, and other offerings are reasonable and necessary; and that the costs have a fair and reasonable relationship to the benefit, privilege, service or product provided to the customer.

<u>Section 5</u>. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on June 26, 2025.

AYES: NOES: ABSTAINED: ABSENT:	
	Paloma Aguirre, Chair Board of Directors San Diego Community Power
ATTEST:	APPROVED AS TO FORM:
Maricela Hernandez, MMC, CPMC Secretary, Board of Directors San Diego Community Power	Veera Tyagi, General Counsel San Diego Community Power



2025 2026



SAN DIEGO COMMUNITY POWER

Operating Budget Fiscal Year 2025-2026

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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

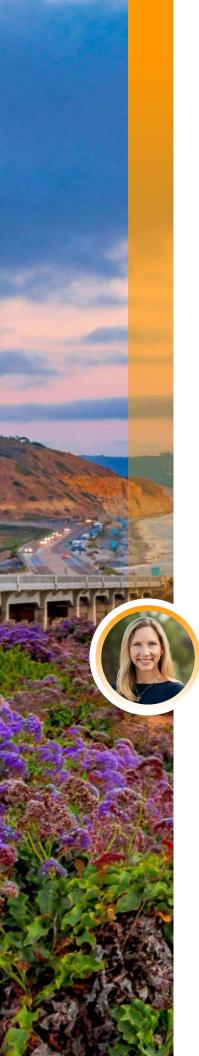
Even as we deliver near-term savings, we continue to plan for long-term energy security and stability. The broader power market remains volatile, shaped by a constrained statewide resource supply and uncertain federal tax credit and trade policies. Our Power Services team is navigating these challenges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

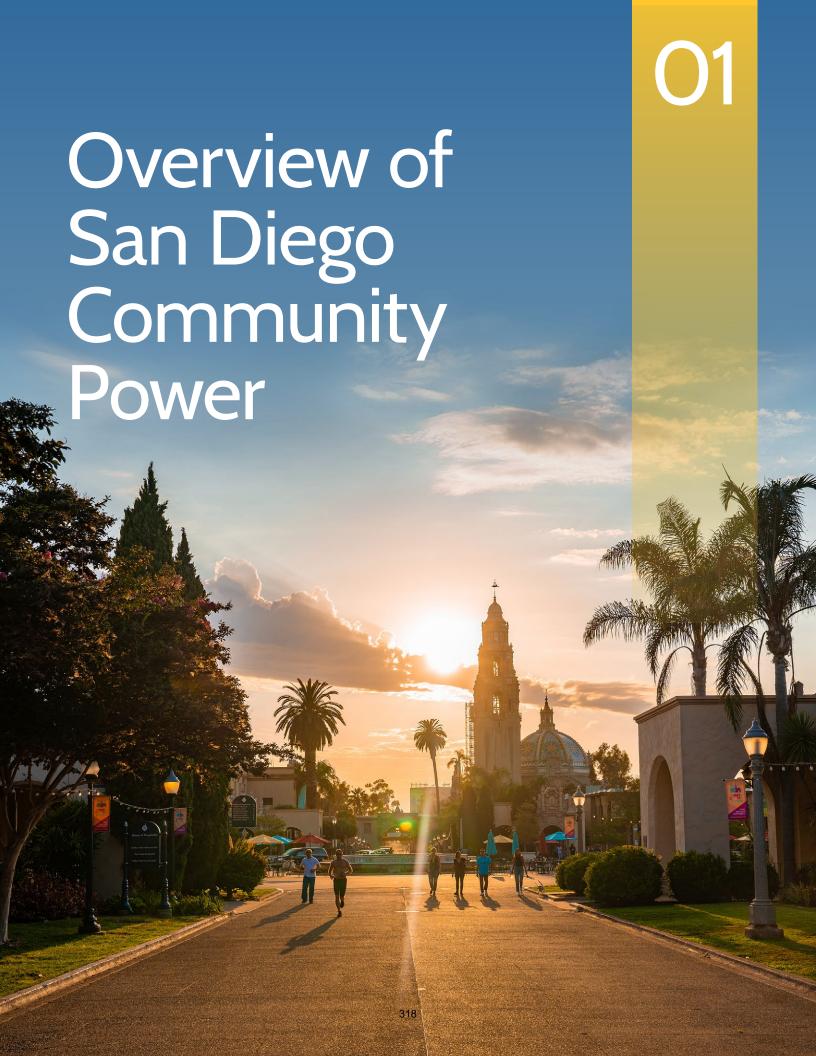
- 1. Expanding Programs and Incentives Scaling Solar Battery Savings and launching the SDREN portfolio to support clean energy adoption, equity and resilience
- 2. Capital Investment Planning Advancing our Capital Investment Plan to guide infrastructure development and ensure transparency
- **3.** Stable, 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 San Diego Community Power

Karin Burns



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

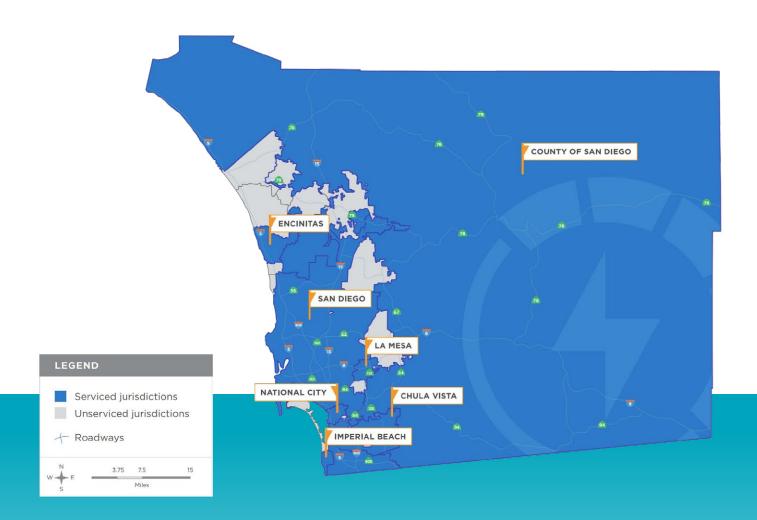




Serviced Communities

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.

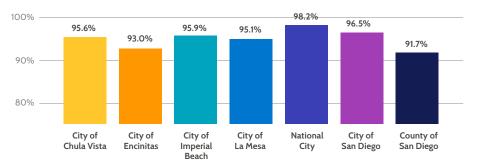
FIGURE 3. SAN DIEGO COUNTY POPULATION

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

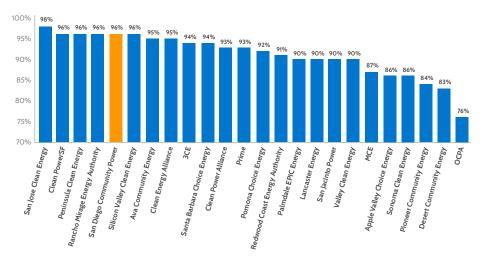
FIGURE 4. PARTICIPATION BY JURISDICTION



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

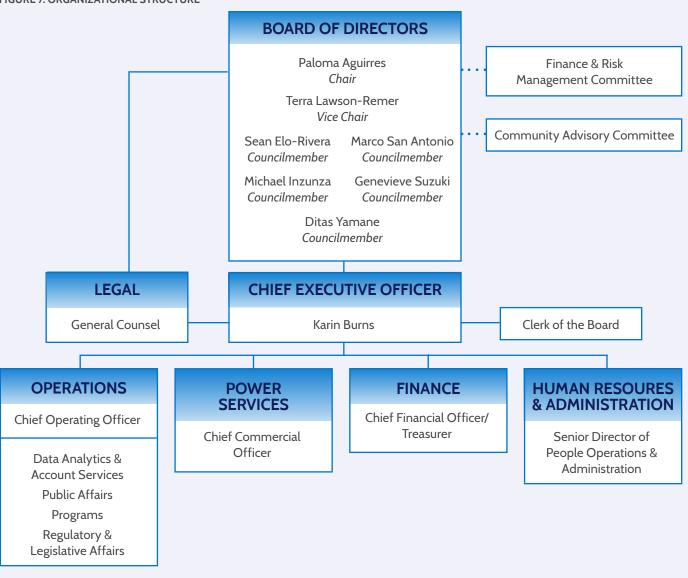
In September 2019, the cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa adopted an ordinance and resolution to form San Diego Community Power, a California Joint Powers Authority (JPA). In 2021, National City and the County of San Diego voted to join Community Power.

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

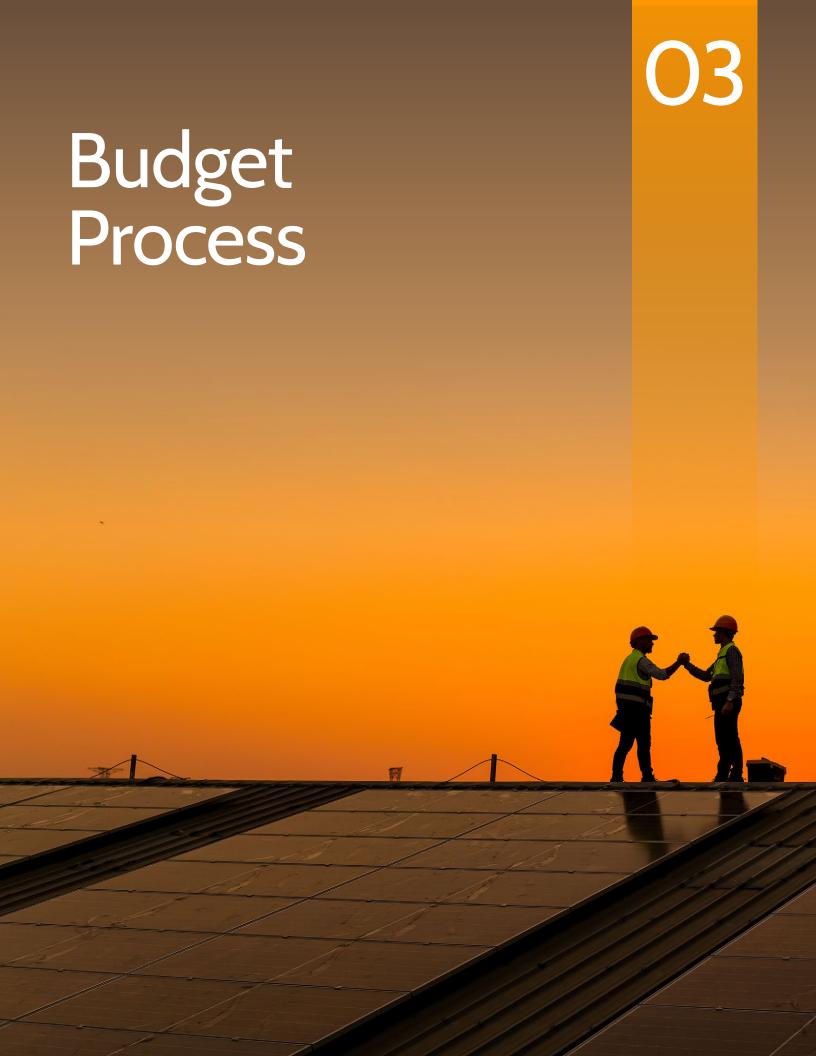
FIGURE 7. ORGANIZATIONAL STRUCTURE



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

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

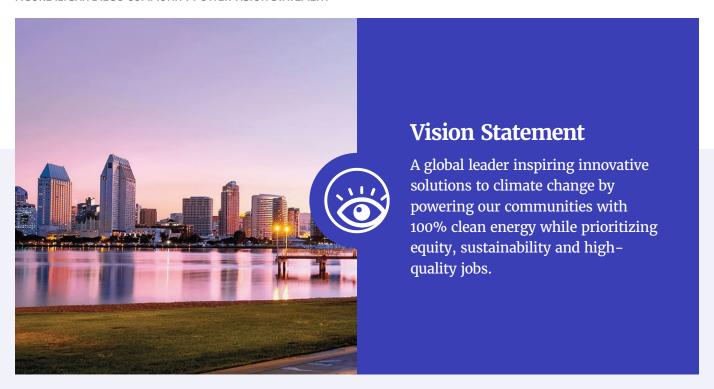
Ensure high customer satisfaction and retention.

- · 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.

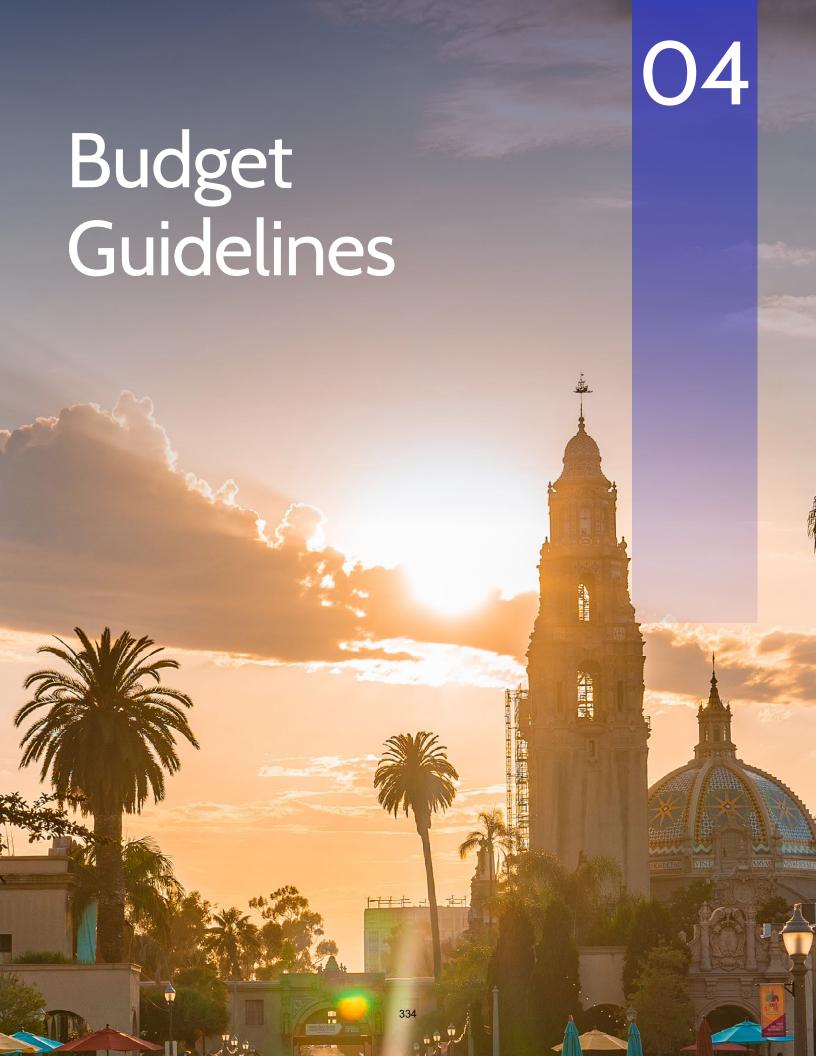
Together, these efforts create a strong feedback loop between our agency and the public, ensuring our budget reflects both fiscal responsibility and community values and that every customer has a voice in building a clean, affordable and equitable energy future for our region.

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	22.2
Total Expenses	1,071.0	1,143.9	1,035.0
Net Position	233.3	34.0	164.6

^{*}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

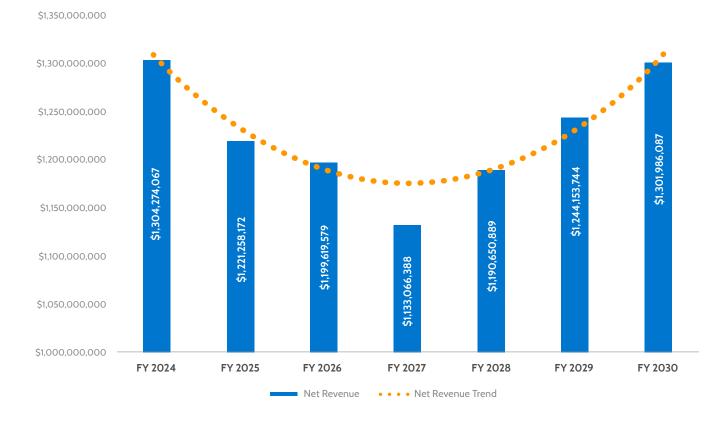


Table 2 summarizes the revenues for the FY24 Amended Budget, FY25 Amended Budget and FY26 Proposed Operating Budget.

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	22.2
Total Expenses	1,071.7	1,147.1	1,035.0

^{*}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	87.0	94.0			

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

FIGURE 26. COMMUNITY POWER'S DEPARTMENTS

Executive Team	2	Operation	ns	Human Resource Administ		Finance	
Power Services		Program	s	Regulato and Legis		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 2026-2030 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 2026-2030 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 \$54.7 million and the FY 2026–2030 CIP total \$344.3 million. Additionally, \$11.2 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	9.2	-	22.2
Regional Energy Network ^[2]	-	31.9	-
DAC-GT	(O.1)	0.6	-
CDFA	0.7	-	-
Equitable Building Decarbonization	1.4	-	-
Other	-	-	-
CIP Revenue	11.2	32.5	22.2

^{*}Amounts displayed in millions of dollars

[🗓] The carry forward amount represents actual financial data through March 31, 2025, updated April 30, 2025, and will be reconciled at the close of fiscal year 2024-2025

[🛿] The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Year 2024–2027, and funded programs will be available across SDG&E service territory.

TABLE 6.1. 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 Network ^[2]	2.1	2.1	-	31.9	59.5	51.4	42.0	43.7	228.6
DAC-GT	0.9	1.0	(O.1)	0.6	0.5	0.5	0.5	0.5	2.4
CDFA	0.7	-	0.7	-	-	-	-	-	0.7
Equitable Building Decarbonization	1.5	0.1	1.4	-	-	-	-	-	1.4
Other	-	_	-	-	-	-	_	-	-
Subtotal	5.2	3.2	2.0	32.5	60.0	51.9	42.5	44.2	233.0
Internal Funding									
Solar Battery Savings	10.6	7.4	3.2	18.8	11.1	10.4	8.3	8.5	60.3
Energy Efficiency	0.3	0.3	0.0	-	-	-	_	-	0.0
Pilot Programs	3.0	0.5	2.5	-	-	-	-	-	2.5
Grants	0.8	0.6	0.2	1.3	-	-	_	-	1.5
DER	0.1	0.1	0.0	-	1	-	_	-	0.0
Flexible Load	0.6	0.3	0.3	0.3	0.6	0.6	0.8	0.7	3.3
IT Projects	2.6	0.1	2.5	1.5	-	-	_	-	4.0
Community Education	0.1	0.1	-	0.0	-	-	-	-	0.0
Program Evaluation	-	-	-	0.3	-	-	-	-	0.3
Application Assistance	0.3	-	0.3	-	1	-	-	-	0.3
Other	-	-	-	-	7.4	8.7	11.2	11.7	39.1
Subtotal	18.4	9.2	9.2	22.2	19.1	19.7	20.3	20.9	111.3
CIP Expense Total	23.6	12.5	11.2	54.7	79.1	71.6	62.8	65.1	344.3

^[1] The carry forward amount represents actual financial data through March 31, 2025, updated April 30, 2025, and will be reconciled at the close of fiscal

^[2] The Regional Energy Network was fully appropriated for \$124M in January 2025 for Calendar Years 2024–2027, it is reflected in this table as anticipated spending by fiscal year.

Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2026–2030 Capital Investment Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$344.3 million in investments across San Diego County. More detail can be found within the companion FY 2026-2030 Capital Investment Plan book. Projects include a number of shortand 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.

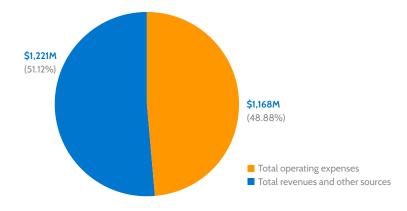
FIGURE 28. OPERATING REVENUES VS. EXPENDITURES



	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	
NET POSITION	\$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	1,035.0	967.0	926.4	931.1	957.9
Annual Reserve (Net Position)	164.6	166.0	264.3	313.0	344.1
Cumulative Net Position	574.1	740.1	1,004.4	1,317.5	1,661.6
180-Day Expense	510.4	486.8	467.3	470.1	483.8
Projected Excess Reserves	63.7	253.3	537.1	847.4	1,177.7



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)

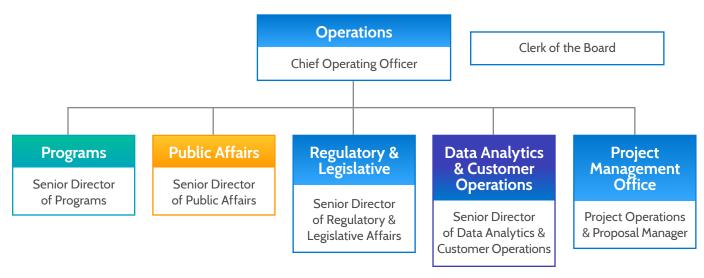
- · Implement new project intake and tracking tools (target: Q2 FY 2025)
- Maintain a cross-functional project schedule (target: update quarterly)
- Implement a team utilization framework (target: Q3 FY 2025)
- · Develop and launch a centralized internal dashboard for tracking project and policy updates (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	5.0	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	9.0	

^{*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	8.0	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

DEPARTMENT	FY25	FY26
POSITIONS	Actual	Proposed
IT and Data Analytics	9.0	

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 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 (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	12.0	

^{*6.0} positions will be externally funded in FY26

Department Organizational Structure

FIGURE 38. PROGRAMS ORGANIZATIONAL STRUCTURE

Customer 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	1,243.0	1,221.0
(Less 1.75% Uncollectible Customer Accounts)	(61.5)	(21.8)	(21.4)
Net Operating Revenues	1,304.3	1,221.3	1,199.6

^{*}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*

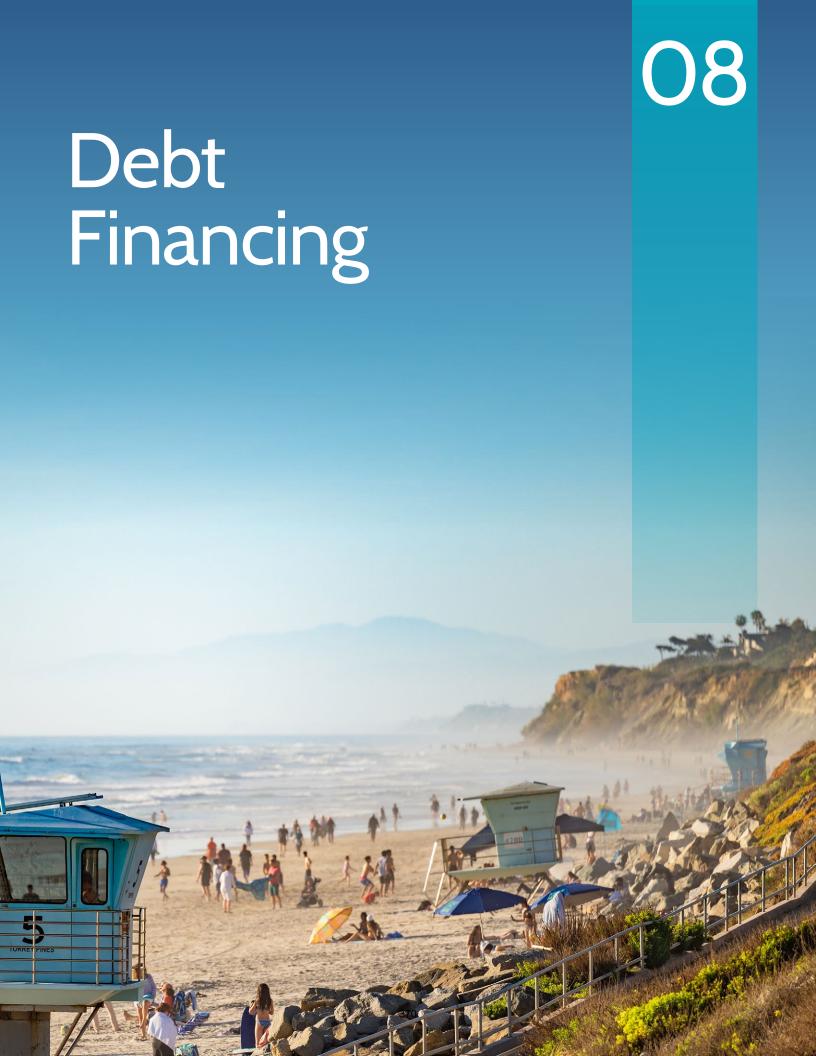
	FY24 Amended	FY25 Amended	FY26 Proposed
Other G & A	5.7	3.6	4.0
Cal CCA Dues	0.4	0.5	0.6
Rent	0.4	0.7	0.9
Partnerships/Sponsorships/Memberships	0.0	0.0	0.0
Insurance	0.1	0.1	0.3
General and Administration	6.6	4.9	5.9

^{*}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.

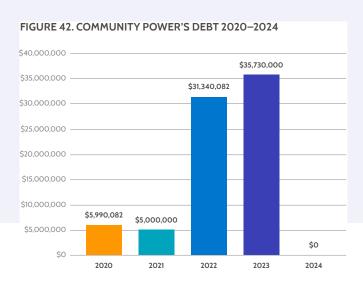
The Debt Policy enables Community Power to issue bonds that will ultimately be subject to Board approval as a separate action. The Debt Policy will help Community Power take advantage of ownership opportunities that may arise, especially in conjunction with state or federal funding that might be available.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

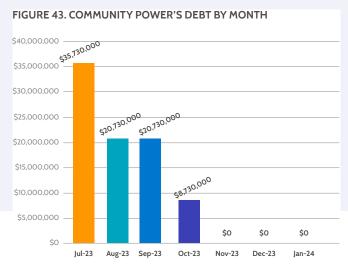
The Debt Policy articulates:

- 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

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.

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Capital Investment Plan (CIP)
Fiscal Years 2026–2030

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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.

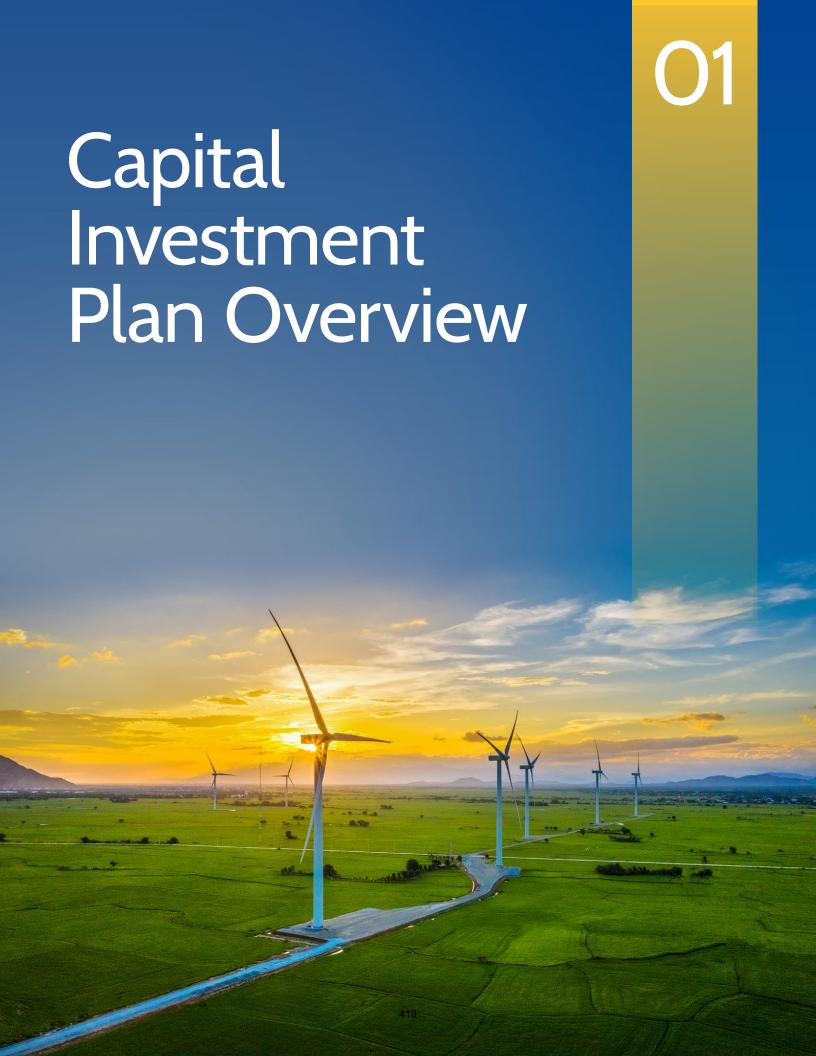
As we look ahead, our focus remains on driving measurable impact: accelerating the region's clean energy transition, supporting local climate goals and building a more just and resilient energy system. With the continued leadership of our Board of Directors, Community Advisory Committee and dedicated 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	9.2	-	22.2
Regional Energy Network [2]	-	31.9	-
DAC-GT	(O.1)	0.6	-
CDFA	0.7	-	-
Equitable Building Decarbonization	1.4	-	1
Other	-	-	ı
CIP Revenue	11.2	32.5	22.2

^{*}Amounts displayed in millions of dollars

^[1] The Carry Forward amount represents actual financial data through March 31, 2025, updated April 30, 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 Years 2024–2027 and funded programs will be available across SDG&E service territory

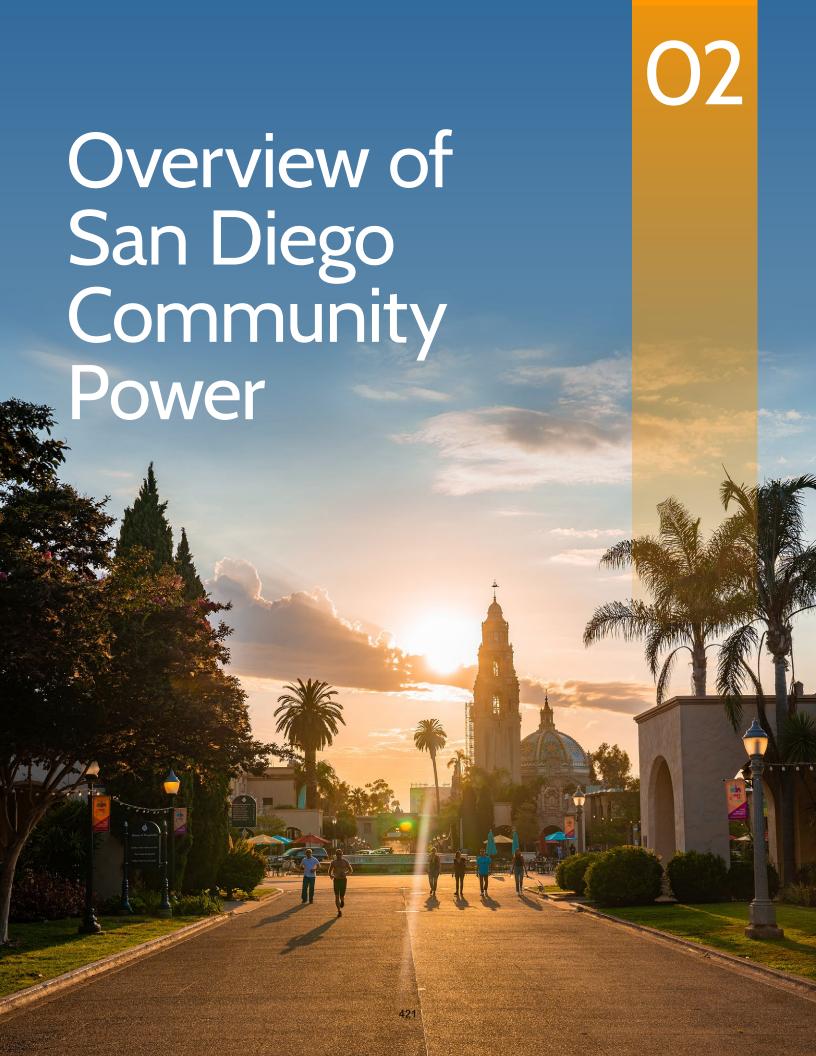
The first year of the CIP is appropriated as part of Community Power's annual budget process and becomes the adopted capital budget for the fiscal year. The subsequent years of the CIP are planned expenses that are subject to Board approval during the annual budget process and are subject to change.

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 Network ^[2]	2.1	2.1	-	31.9	59.5	51.4	42.0	43.7	228.6
DAC-GT	0.9	1.0	(O.1)	0.6	0.5	0.5	0.5	0.5	2.4
CDFA	0.7	-	0.7	-	-	-	-	-	0.7
Equitable Building Decarbonization	1.5	0.1	1.4	-	-	-	-	-	1.4
Other	-	_	-	-	-	-	-	-	-
Subtotal	5.2	3.2	2.0	32.5	60.0	51.9	42.5	44.2	233.0
Internal Funding									
Solar Battery Savings	10.6	7.4	3.2	18.8	11.1	10.4	8.3	8.5	60.3
Energy Efficiency	0.3	0.3	0.0	-	-	-	-	-	0.0
Pilot Programs	3.0	0.5	2.5	-	-	-	-	-	2.5
Grants	0.8	0.6	0.2	1.3	-	-	-	-	1.5
DER	0.1	0.1	0.0	1	-	-	-	-	0.0
Flexible Load	0.6	0.3	0.3	0.3	0.6	0.6	0.8	0.7	3.3
IT Projects	2.6	0.1	2.5	1.5	-	-	-	-	4.0
Community Education	0.1	0.1	-	0.0	-	-	-	-	0.0
Program Evaluation	-	_	-	0.3	-	-	-	-	0.3
Application Assistance	0.3	-	0.3	-	-	-	-	-	0.3
Other	-	-	-	-	7.4	8.7	11.2	11.7	39.1
Subtotal	18.4	9.2	9.2	22.2	19.1	19.7	20.3	20.9	111.3
CIP Expense Total	23.6	12.5	11.2	54.7	79.1	71.6	62.8	65.1	344.3

^[1] The carry forward amount reviews actual financial data through March 31, 2025, updated April 30, 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 Years 2024–2027, 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







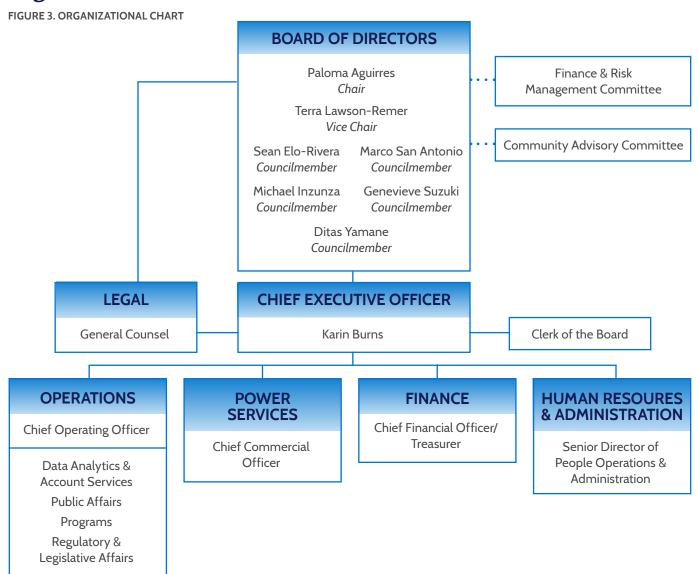








Organizational Structure



03

Capital Investment Plan



Capital Investment Plan (CIP)

About the CIP

The Community Power Fiscal Year 2026-2030 Capital Investment Plan (CIP) includes 21 projects that will receive funding in the five-year period, totaling \$344.3 million in investments across San Diego County. 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



A global leader inspiring innovative solutions to climate change by powering our communities with 100% clean energy while prioritizing equity, sustainability and high-quality jobs.

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 3. 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.

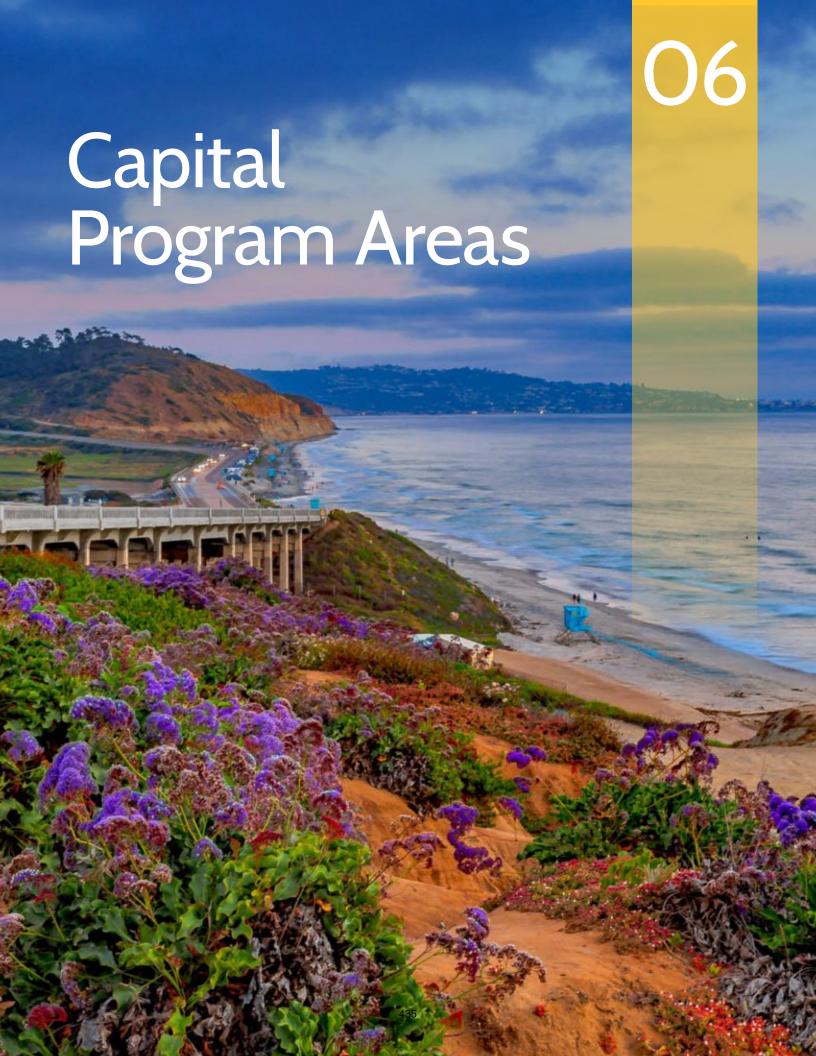
Promoting accessibility

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 4. ENERGY AWARENESS AND EDUCATION PROJECTS

Project	Scope of Work	Carry Forward	FY26
Civic Spark Fellows	Partnership with San Diego State University professor-led student cohorts to expand outreach for key Community Power initiatives and programs while	-	\$40,000
	providing workforce development opportunities		
Equitable Building Decarbonization	The Equitable Building Decarbonization Direct Install 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.	\$1,400,000	-
Total		\$1,400,000	\$40,000

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 5. 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 6. 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	(\$112,692)	\$589,822
Total		(\$112,692)*	\$589,822

^{*(112,692)} 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 \$589,822 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 7. 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	\$2,330,672	-
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		\$2,530,702	-

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 8. 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	\$248,380	\$1,275,600
Total		\$255,047	\$1,275,600

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 9. 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 10. 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	\$89,500	-
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	\$24,778	-
Program Evaluation	TBD	-	\$250,000
Total		\$114,278	\$250,000

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, such as:

- · 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 11. 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.	\$3,209,422	\$18,750,000
Total		\$3,209,422	\$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 12. DISTRIBUTED ENERGY RESOURCES: DEMAND RESPONSE PROJECTS

Project	Scope of Work	Carry Forward	FY26
Distributed Energy	Central to Community Power's Flexible Load	\$348,414	\$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		\$348,414	\$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 13. 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.		\$31,868,547
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.	\$690,845	-
Total		\$690,845	\$31,868,547

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 14. 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 15. 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 16. TRANSPORTATION ELECTRIFICATION: MEDIUM- AND HEAVY-DUTY VEHICLES PROJECTS

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 17. 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	\$500,000
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.	\$391,467	\$55,000

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		\$2,524,800	\$1,471,667

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.

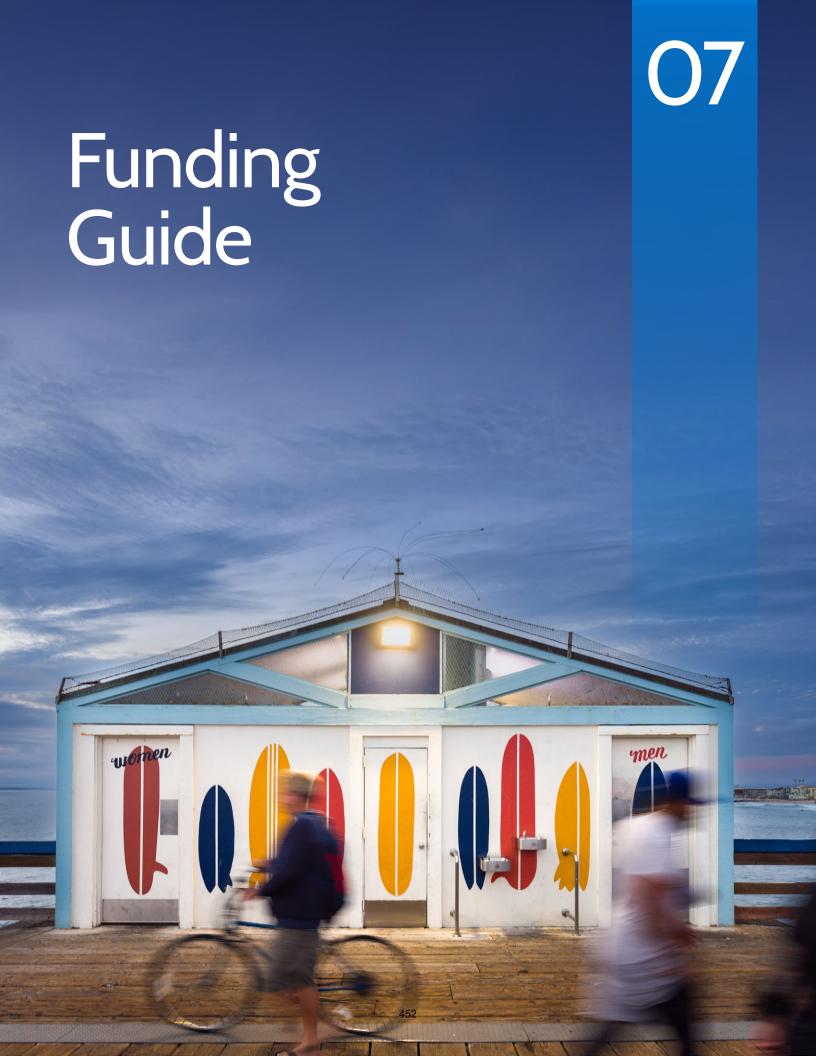
Benefits

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 18. 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.
Distributed Energy Backup Assets (CEC)	The Distributed Electricity Backup Assets (DEBA) Program incentivizes the construction of cleaner and more efficient distributed energy assets that serve as on-call emergency supply or load reduction for the state's electrical grid during extreme events. Projects that may be eligible for incentives include efficiency upgrades, maintenance, and capacity additions to existing power generators, as well as new zero- or low-emission technologies, including, but not limited to, fuel cells or energy storage, at existing or new facilities. All funding recipients under the program shall participate as an on-call emergency resource for the state during extreme events.
Self-Generation Incentive Program—Residential Solar & Storage Equity (CPUC)	To support customer resiliency and grid reliability, the CPUC has authorized funding of \$280 million for SGIP's Residential Solar and Storage Equity budget. This funding includes prioritization of low-income customers to provide bill savings. Paired with the IRA tax credit, the incentive is intended to cover the full system installation cost.
Enabling Electric Vehicles as Distributed Energy Resources (CEC)	The purpose of this solicitation is to fund studies and applied research and development (R&D) projects that support the approved Electric Program Investment Charge 2021–2025 (EPIC 4) Investment Plan's strategic objective to increase the value proposition of distributed energy resources to customers and the grid. This solicitation's research topics fall under the EPIC 4 Transportation Electrification Initiative.

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 14

TO: Board of Directors

FROM: Jennine Camara, Director of Portfolio Management

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Update to San Diego Community Power's Energy Risk

Management Policy: California Carbon Allowance and Carbon Offset

Transactions and Obligations

DATE: June 26, 2025

RECOMMENDATION:

Adoption of Resolution No. 2025-05 approving Addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations, to allow the CEO to approve procurement of California Carbon Allowance (CCA) and Carbon Offset (CO) to meet San Diego Community Power compliance obligations under California's Cap-and-Trade Program.

BACKGROUND:

CARB's Cap-and-Trade Program is a key element of California's strategy to reduce greenhouse gas (GHG) emissions. The Cap-and-Trade Regulation establishes a declining limit on major sources of GHG emissions throughout the state and creates an economic incentive for investment in cleaner and more efficient technologies.

As the electric sector continues to generate electricity from fossil fuel power plants, GHG emissions are generated, and entities are required to purchase carbon allowances or carbon offsets to meet compliance obligations. Electric importers have a carbon allowance obligation based on the type of electricity and whether they can identify the specific source of electricity. Specified source electric imports may carry an emissions rate based on the resources type, and unspecified source imports are assessed at a default emissions rate.

San Diego Community Power (Community Power) has worked to achieve carbon reductions by purchasing electricity generated from renewable sources like wind and solar, essentially offsetting the need for carbon-emitting power plants, which are the energy producing entities typically required to purchase carbon allowances under the

Cap-and-Trade Program. While minimal, there are instances where Community Power may be required to purchase carbon allowances to meet a GHG emissions obligation.

In addition to meeting renewable goals, Community Power also prioritizes meeting all grid reliability requirements through Resource Adequacy (RA) Program compliance. In the short term, Community Power may rely on electric imports to meet RA requirements during periods of high demand. In these limited instances, Community Power will be assessed a carbon obligation based on the specific resource type, or in the case of an unspecified import, a default GHG emission rate, and will need to procure carbon allowance and/or carbon offsets to comply with established regulations.

Community Power's Board of Directors ("Board") adopted an Energy Risk management Policy ("ERMP") on January 25, 2020, and amended the policy on January 15, 2021. The ERMP provides a process for monitoring, measuring, reporting, and controlling market and credit risks for the purchase of energy and related products, and delegates certain authorities to staff.

ANALYSIS AND DISCUSSION:

California carbon allowances are available for trade in CARB's quarterly auctions, and secondary carbon offset and carbon allowance markets. Because CARB auctions are the primary mechanism for allowance purchases, delegation of authority is required for Community Power staff to submit bids and participate in procurement. The dynamic nature of allowance prices and transactions in the secondary market also precludes staff ability to effectively procure without formal delegation. This action is to amend the ERMP to include Addendum 2: California Carbon Allowance and Carbon Offset Transactions and Obligations, to delegate to Community Power staff the ability to purchase carbon allowances and carbon offsets within certain parameters.

Community Power will consider the cost of carbon, renewable priorities, and overall benefit to Community Power rate payers when evaluating any import energy strategies. Community Power will only acquire carbon allowances or carbon offsets to meet forecasted obligations, consistent with established Energy Risk management Policy principles prohibiting taking speculative positions and trading.

FISCAL IMPACT:

There is no new fiscal impact from this recommendation as funding is included in the most recently approved budget. This action includes a total not-to-exceed amount of \$1,000,000 and 20,000 allowances per transaction.

COMMITTEE REVIEW:

This item was presented at the Finance and Risk Management Committee meetings on June 12, 2025. The Committee unanimously recommended Board approval of this item.

ATTACHMENTS:

- A. Resolution No. 2025-05, approving addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations.
 - a. Exhibit A; Addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations.

ITEM 14 ATTACHMENT A

RESOLUTION NUMBER 2025-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING ADDENDUM 2 TO SAN DIEGO COMMUNITY POWER'S ENERGY RISK MANAGEMENT POLICY: CALIFORNIA CARBON ALLOWANCE AND CARBON OFFSET TRANSACTIONS AND OBLIGATIONS.

- A. San Diego Community Power ("Community Power") is a joint powers agency formed pursuant to the Joint Exercise of Powers Act, Cal. Gov. Code § 6500 et seq., California Public Utilities Code § 366.2, and a Joint Powers Agreement first effective on October 1, 2019 ("JPA Agreement"), as amended from time to time.
- B. Pursuant to Section 4.6.16 of its JPA Agreement, the Community Power Board of Directors ("Board") has the responsibility to exercise the Specific Powers identified in Section 3.2 except those which the Board may elect to delegate to the Chief Executive Officer.
- C. Section 3.2.12 of the JPA Agreement authorizes Community Power to adopt rules, regulations, policies, bylaws and procedures governing the operation of Community Power and Section 4.5.5 identifies setting policy as a duty of the Board.
- D. The Board did adopt an Energy Risk Management Policy ("ERMP") on June 25, 2020, to provide processes for monitoring, measuring, reporting, and controlling market and credit risks for the purchase of energy and related products, and amended the ERMP on January 15, 2021, to include Addendum 1 to provide a methodology to evaluate and mitigate congestion risk.
- E. Section 7.2 of the ERMP identifies the Board may amend the Energy Risk Management Policy as it deems necessary.
- F. CARB's Cap-and-Trade Program is a key element of California's strategy to reduce greenhouse gas (GHG) emissions. The Cap-and-Trade Regulation establishes a declining limit on major sources of GHG emissions throughout the state and creates an economic incentive for investment in cleaner and more efficient technologies.
- G. Community Power may sometimes be assessed a carbon obligation under the Cap-and-Trade Program, for instance when Community Power relies on electric imports to meet resource adequacy requirements during periods of high demand.

- H. California carbon allowances are available for trade in CARB's quarterly auctions, and secondary carbon offset and carbon allowance markets. Because CARB auctions are the primary mechanism for allowance purchases, delegation of authority is required for Community Power staff to submit bids and participate in procurement. The dynamic nature of allowance prices and transactions in the secondary market also precludes staff ability to effectively procure without formal delegation.
- I. The Board seeks to amend the Energy Risk Management Policy to include Addendum 2: California Carbon Allowance and Carbon Offset Transactions and Obligations, to delegate to Community Power staff the ability to purchase carbon allowances and carbon offsets within certain parameters.

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

- 1. The Board of Directors has determined that the recitals herein are true and correct.
- 2. The Board of Directors hereby amends the Energy Risk Management Policy to include Addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations, attached hereto as Exhibit A.
- 3. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on June 26, 2025, with the following vote.

AYES: NOES: ABSTAINED: ABSENT:	
	Paloma Aguirre Chair Board of Directors San Diego Community Power
ATTEST:	APPROVED AS TO FORM:
Maricela Hernandez, MMC, CPMC Clerk of the Board/Secretary San Diego Community Power	Veera Tyagi, General Counsel San Diego Community Power



Addendum 2 to San Diego Community Power's Energy Risk Management Policy: California Carbon Allowance and Carbon Offset Transactions and Obligations

I. Carbon Compliance

CARB's Cap-and-Trade Program is a key element of California's strategy to reduce greenhouse gas (GHG) emissions. The Cap-and-Trade Regulation establishes a declining limit on major sources of GHG emissions throughout the state and creates an economic incentive for investment in cleaner and more efficient technologies. Carbon allowances are permits issued by CARB that authorize an entity to emit one metric ton of CO2. While a carbon offset also represents one metric ton of CO2, offsets are generated by projects that reduce emissions or remove CO2 from the atmosphere. Both carbon allowances and carbon offsets can be used to meet GHG emissions obligations.

Under the Cap-and-Trade Program, electrical distribution utilities receive allocations of free carbon allowances. The Investor-Owned-Utilities (IOUs) are required to sell these allowances and return the sale proceeds to customers via a credit on their bills, known as the California Climate Credits.

As the electric sector continues to generate electricity from fossil fuel power plants, GHG emissions are generated, and entities are required to purchase carbon allowances or carbon offsets to meet compliance obligations. Electric importers have a carbon allowance obligation based on the type of electricity and whether they can identify the specific source of the electricity. Specified source electric imports may carry an emissions rate based on the resource type, and unspecified source imports are assessed at a default emissions rate.

II. SDCP Carbon Obligations

SDCP has worked to achieve carbon reductions by purchasing electricity generated from renewable sources like wind and solar, essentially offsetting the need for carbon-emitting power plants, which are the energy producing entities typically required to purchase carbon allowances under California's Cap-and-Trade Program. While minimal, there are instances where SDCP may be required to purchase carbon allowances to meet a GHG emissions obligation.

SDCP has been contracting for long-term renewable power generation to meet renewable energy targets and to build a diverse portfolio of clean resources to serve customers. SDCP also prioritizes meeting all grid reliability requirements through Resource Adequacy (RA) Program compliance. In the short-term, SDCP may rely on electric imports to meet RA requirements during periods of high demand. The

combination of traditional fossil fuel resource retirements and delays impacting the ability for new clean energy resources to connect to the grid, has limited the available RA supply in the short-term markets.

In these limited instances, SDCP will be assessed a carbon obligation based on the specific resource type, or in the case of an unspecified import, a default GHG emissions rate, and will need to procure carbon allowance and/or carbon offsets to comply with established regulation.

III. Procurement of California Carbon Allowances and Carbon Offsets

California carbon allowances are available for trade in CARB's quarterly auctions, and secondary carbon offset and carbon allowance markets. Because CARB auctions are the primary mechanism for allowance purchases, delegation of authority is required for SDCP staff to submit bids and participate in procurement. The dynamic nature of allowance prices and transactions in the secondary market also precludes staff ability to effectively procure without formal delegation.

SDCP will consider the cost of carbon, renewable priorities, and overall benefit to SDCP rate payers when evaluating any import energy strategies. SDCP will only acquire carbon allowances or carbon offsets to meet forecasted obligations, consistent with established Energy Risk Management Policy principles prohibiting taking speculative positions and trading.

By approving this policy, the Board delegates to the Chief Executive Officer, the ability to procure California Carbon Allowance (CCA) and Carbon Offset (CO) at the following product volumetric and notional transaction limits:

Delegation of Authority per	Product	Volumetric Limit	Notional
Transaction by Position/Title	Type	(MTCO2e)	Value Limit
Chief Executive Officer	CCA/CO	20,000	\$1,000,000

Any changes to this delegation of authority will require Board approval.



SAN DIEGO COMMUNITY POWER Staff Report – Item 15

TO: Board of Directors

FROM: Eric Washington, Chief Financial Officer

Jeb Spengler, Strategic Finance Manager

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Adopt Resolution No. 2025-07, 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

DATE: June 26, 2025

RECOMMENDATION:

Adopt Resolution No. 2025-07, approving parameters under which an energy prepayment transaction can be completed; authorizing and approving documents or "form of" documents supporting the prepay transaction; and directing California Community Choice Financing Authority (CCCFA) to make payments to service providers for issuance costs from prepay bond proceeds.

BACKGROUND:

On October 1, 2019, the founding members of San Diego Community Power (Community Power) adopted the Joint Powers Agreement (JPA), 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.

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

Finally, 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. These entities must sell that commodity to retail end-users within their traditional service area.

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

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

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

On November 7, 2023, Community Power requested bids from qualified and experienced firms to provide a full range of municipal advisory services necessary for Community Power to evaluate, structure, and execute prepayment transactions. Shortly after, on December 18, 2023, Community Power agreed with PFM Financial Advisors LLC (PFM) to provide these services.

Next, on February 15, 2024, the Finance and Risk Management Committee received a Clean Energy Prepayment Financing Presentation. It discussed Community Power's interest in pursuing a prepayment transaction, given the potential savings it can generate. Subsequently, on February 22, 2024, the Board received a similar Presentation on Clean Energy Prepayment Financing.

Then, on April 19, 2024, Community Power issued two Requests for Proposals (RFPs) for the prepaid transaction for legal services related to bond, tax, and disclosure counsel and for underwriter services to structure an energy prepayment program.

On August 22, 2024, the Community Power Board of Directors approved Chapman and Cutler LLP to facilitate the capacity of Disclosure Counsel services.

Through the RFPs issued on April 19, 2024, Community Power also recommended Orrick, Herrington & Sutcliffe LLP to facilitate the capacity of Tax and Bond Counsel services. This agreement would be directly with the Bond Issuer.

On September 26, 2024, the Community Power Board of Directors approved Community Power's membership into the California Community Choice Finance Financing Authority (CCCFA) as an associate member to facilitate the CCCFA serving as the conduit issuer of prepaid bonds on Community Power's behalf.

On October 11, 2024, the CCCFA Board of Directors admitted Community Power as an associate member during a special meeting.

On October 24, 2024, the Community Power Board of Directors approved the prepay Resolution to authorize the prepay transaction parameters and documents.

On November 5, 2024, the prepay bonds were sold to investors and the prepaid agreement was executed. The transaction is estimated to save ratepayers \$6.8 million annually through 2032.

On May 5, 2025, Community Power kicked off initial discussions for a follow-on transaction utilizing the same project participants in an effort to provide more energy cost savings through a second clean energy prepay transaction (subject to market conditions).

On May 22, 2025, the Community Power Board of Directors approved the VAMO Swap Agreements with Clean Power Alliance to be used for future prepayment transactions, including the proposed second clean energy prepay transaction.

ANALYSIS AND DISCUSSION:

TIMELINE

Staff is providing an update and presentation to the Board on the current timeline for a potential second clean energy prepayment bond financing. Below is a draft timeline, which is subject to change.

- May 22, 2025: Board approves VAMO Swap with Clean Power alliance
- June 11, 2025: Scheduled Kestrel Green Bond certification interview
- **June 12, 2025**: FRMC Presentation and potential recommendation for Board approval on prepay Resolution to authorize a second prepay transaction with parameters and documents utilizing the same project participants as first transaction
- June 26, 2025: Board Presentation and potential recommendation for Board approval on second prepay Resolution to authorize prepay transaction parameters and documents
- **July 8, 2025:** (Tentative) Bond Pricing (subject to change based on market conditions)
- July 18, 2025: (Tentative) Estimated bond closing date (subject to change based on bond pricing date)

• September 2025: (Tentative) Energy cost savings begin

REQUESTED ACTION:

The proposed Board Resolution No. 2025-07 encompasses the following approvals or authorizations relating to the execution of the prepay transaction:

- Defines the parameters under which the prepay transaction can be completed;
- Authorizes staff to execute or approve for distribution documents and "form of" documents supporting the prepay transaction.

The proposed Board Resolution will allow staff to act nimbly when market conditions are advantageous for issuing the prepay bonds.

PARAMETERS

Board Resolution No. 2025-07specifies parameters that must be satisfied to execute the prepay transaction. Those parameters are:

- That the aggregate bond principal will not exceed \$1.5 billion. The final size of the transaction will be determined at the initial pricing date of the bonds in response to market conditions:
- That the minimum "Prepaid Discount" shall be at least 8%. This establishes the minimum cost savings;
- That the fees of the transaction will not exceed 1% of the bond issuance amount.

FISCAL IMPACT:

CCCFA will pay the cost of bond issuance out of bond proceeds, not exceeding 1% of the issuance. Community Power will not pay these costs. Accordingly, Community Power's operating expense budget will have no fiscal impact. As a result of the prepay transaction, Community Power expects to realize average annual savings in excess of \$4.5 million on its energy costs through the initial term of the bonds (typically 7-10 years).

The amount of the discount is dependent on market conditions. Community Power staff will work with the underwriter, Morgan Stanley, and its financial advisor, PFM, to determine the optimal time to market the bonds. Community Power is targeting savings of 8-10%.

COMMITTEE REVIEW:

This item was presented at the Finance and Risk Management Committee on June 12, 2025. The Committee recommended advancing this item to the Board for approval.

ATTACHMENTS:

 Resolution No. 2025-07 of the Board of Directors of San Diego Community Power Authorizing the Execution and Delivery of a Power Supply Contract and Certain Other Documents in Connection with the Issuance of California Community Choice Financing Authority (CCCFA) Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith.

• Exhibit A:

- Power Supply Contract between San Diego Community Power and the Issuer;
- Master Custodial Agreement by and among San Diego Community Power, the Issuer, Morgan Stanley Capital Group (MSCG), the Prepaid Supplier, and a custodial bank to be named therein;
- Form of Limited Assignment Agreement, by and among San Diego Community Power, the counterparty to the power purchase agreement described therein, and MSCG;
- Letter Agreement by and among San Diego Community Power, the Prepaid Supplier, and MSCG regarding matters relating to Assignment Agreements;
- Prepaid Energy Project Administration Agreement relating to the Project, by and between San Diego Community Power and the Issuer; and
- Memorandum of Understanding between San Diego Community Power and the Issuer indemnifying the Issuer against specific rating fees.

• Exhibit B:

Appendix A to the Preliminary Official Statement

ITEM 15 ATTACHMENT A

RESOLUTION NO. 2025-07

RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER, AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (CCCFA) CLEAN ENERGY PROJECT REVENUE BONDS; AND CERTAIN OTHER ACTIONS REQUIRED TO ENSURE THE REDUCTION IN THE COSTS OF RENEWABLE ENERGY THEREWITH.

THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS San Diego Community Power ("San Diego Community Power" or "SDCP") was formed on October 1, 2019, under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code section 6500 *et seq*. (the "JPA Law"); and

WHEREAS San Diego Community Power is duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage; and

WHEREAS San Diego Community Power is a community choice aggregator (as defined in Section 331.1 of the Public Utilities Code of the State of California (the "Public Utilities Code")), and is a public agency (as defined in the JPA Law) that has implemented a Community Choice Aggregation ("CCA") program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes; and

WHEREAS San Diego Community Power, acting pursuant to the JPA Law, may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS pursuant to the provisions of the JPA Law, San Diego Community Power joined certain other California community choice aggregators by entering into the joint powers agreement (the "Joint Powers Agreement") pursuant to which the CCCFA (the "Issuer") was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist community choice aggregators, including San Diego Community Power, in financing the acquisition of supplies of clean energy; and

WHEREAS the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created; and

WHEREAS San Diego Community Power has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer pursuant to a clean energy prepayment transaction (the "**Prepayment Transaction**"); and

WHEREAS San Diego Community Power has determined to authorize pursuant to this Resolution the undertaking of a Prepayment Transaction with the Prepaid Supplier (defined below); and

WHEREAS in connection with the foregoing, San Diego Community Power is requesting the Issuer to agree to purchase on a prepaid basis certain quantities of clean energy from a Delaware limited liability company (the "Prepaid Supplier"), the sole member of which is Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG"), and to sell such clean energy to San Diego Community Power, as contemplated herein (the "Project"); and

WHEREAS San Diego Community Power is requesting that the Issuer finance the costs of the Project with the proceeds of its clean energy project revenue bonds, with a Series designation determined by the Issuer based on the timing and sequence of issuance (the "**Bonds**") and

WHEREAS San Diego Community Power has determined to authorize the representatives of San Diego Community Power to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

WHEREAS the forms of the following agreements to which San Diego Community Power is a party (collectively, the "**SDCP Documents**") have been submitted to this meeting for approval:

- 1. Power Supply Contract between San Diego Community Power and the Issuer:
- 2. Custodial Agreement by and among San Diego Community Power, the Issuer, MSCG, the Prepaid Supplier and a custodial bank to be named therein;
- Form of Limited Assignment Agreement, by and among San Diego Community Power, the counterparty to the power purchase agreement described therein, and MSCG;
- Letter Agreement by and among San Diego Community Power, the Prepaid Supplier and MSCG regarding matters relating to the Limited Assignment Agreements;

- 5. Prepaid Energy Project Administration Agreement relating to the Project, by and between San Diego Community Power and the Issuer; and
- 6. Memorandum of Understanding between San Diego Community Power and the Issuer indemnifying Issuer against certain ratings fees.

WHEREAS the forms of the following additional documents relating to the Project have also been submitted to this meeting:

 Appendix A to the Preliminary Official Statement to be used in connection with the offering and sale of the Bonds (together with the SDCP Documents, the "Project Documents");

NOW, THEREFORE, IT IS HEREBY DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE SAN DIEGO COMMUNITY POWER as follows:

<u>Section 1.</u> **AUTHORIZED REPRESENTATIVES**. The following named individuals are the authorized representatives of San Diego Community Power with the respective titles specified below (collectively referred to as "**Authorized Representatives**" and individually referred to as an "**Authorized Representative**"):

<u>NAMES</u>	<u>TITLES</u>
Paloma Aguirre	Chair of the Board
Karin Burns	Chief Executive Officer
Eric Washington	Chief Financial Officer
Jack Clark	Chief Operating Officer
Veera Tyagi	General Counsel

Section 2. SDCP Documents. The proposed forms of the SDCP Documents, attached hereto as Exhibit A, are hereby approved. The form of Limited Assignment Agreement may be used, in a substantially similar form, for assignments of the initial or any additional SDCP power purchase agreements, as needed to maintain the transactions approved hereby, and any such Limited Assignment Agreements to be included in the SDCP Documents are hereby approved. Subject to the parameters set forth in Section 5 of this Resolution, any Authorized Representative is hereby authorized and directed, for and on behalf of San Diego Community Power, to execute and deliver the SDCP Documents in substantially similar form, with such changes and insertions therein as the Authorized Representatives executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. Appendix A to the Preliminary Official Statement. Appendix A to the Preliminary Official Statement is hereby approved. Any Authorized Representative is hereby authorized and directed, for and on behalf of San Diego Community Power, to execute and deliver a certificate as to the information regarding San Diego Community Power contained in such Appendix A, with such changes and insertions therein as the Authorized Representative approving the same may deem necessary or appropriate. San

Diego Community Power hereby authorizes the inclusion of such Appendix A in the Preliminary Official Statement and the final Official Statement, in each case with such changes as may be approved as aforesaid.

Section 4. Actions Authorized. The Authorized Representatives, each acting alone, are hereby authorized and directed, for and in the name and on behalf of San Diego Community Power, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which San Diego Community Power has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by San Diego Community Power the transactions contemplated by the Power Supply Contract for the Project, the SDCP Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

<u>Section 5.</u> **Transaction Parameters**. The approvals provided for herein shall be subject to the following parameters:

- (a) the Bonds will not be obligations of San Diego Community Power, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged thereto, including amounts payable by San Diego Community Power under the Power Supply Contract;
- (b) the aggregate principal amount of the related Series of Bonds shall not exceed \$1,500,000,000;
- (c) the "Monthly Discount" and "Minimum Discount" as provided for in the Power Supply Contract for the Project shall be at least 8% of the fixed cash flows or equivalent \$ per MWh; and
- (d) CCCFA total cost of issuance including all underwriting, legal and consultant fees for the Project will not exceed 1.00% of the amount of the proceeds of the Bonds issued by CCCFA with respect to such Project.

<u>Section 6.</u> Execution and delivery of the SDCP Documents by an Authorized Representative shall be conclusive evidence that the parameters set forth in Section 5 have been met, and all actions heretofore taken by the Authorized Representatives with respect to the issuance of the Bonds are hereby ratified, confirmed, and approved.

Section 7. If Section 5 and Section 6 listed herein have been met, an Authorized Representative may direct CCCFA to make payments to vendors that provided professional services to SDCP to complete the SDCP Documents and ultimately the

issuance of the Bonds with respect to the Project. These professional services include legal counsel, bond counsel, tax counsel, municipal financial advisor, swap advisor, trustee and trustee counsel, underwriter of the bonds, underwriter's counsel, and any other vendor required to complete the issuance of the Bonds. Payment to these vendors is considered a cost of issuance and will be paid by CCCFA out of the proceeds of the sale of the Bonds.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for San Diego Community Power, as the case may be. This Resolution now stands of record on the books of San Diego Community Power, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that this Resolution shall take effect upon its passage, shall be continuing and shall remain in full force and effect unless and until expressly revoked by further resolution of the Board of Directors.

ADOPTED AND APPROVED this 26th day of June 2025.

	Paloma Aguirre Chair of the Board of Directors San Diego Community Power
ATTEST:	APPROVED AS TO FORM:
Maricela Hernandez, MMC, CPMC Board Secretary/Clerk of the Board San Diego Community Power	Veera Tyagi, General Counsel San Diego Community Power

EXHIBIT A

SDCP Documents

(see attached)

EXHIBIT A1

POWER SUPPLY CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

SAN DIEGO COMMUNITY POWER

Dated as of [____], 2025

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POWER SUPPLY CONTRACT

This Power Supply Contract (hereinafter "<u>Agreement</u>") is made and entered into as of [____], 2025 (the "<u>Execution Date</u>"), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 *et seq.* of the California Government Code, as amended) ("<u>Issuer</u>") and San Diego Community Power, a California joint powers authority ("Purchaser").

WITNESSETH:

WHEREAS, Issuer has planned and developed a project to acquire long-term Energy supplies from Energy Prepay III, LLC ("<u>Prepay LLC</u>") pursuant to a Prepaid Energy Sales Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "<u>Prepaid Agreement</u>") to meet a portion of the Energy supply requirements of Purchaser through an energy prepayment project (the "<u>Clean Energy Project</u>"); and

WHEREAS, Issuer will finance the prepayment under the Prepaid Agreement, and the other costs of, the Clean Energy Project by issuing the Bonds; and

WHEREAS, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code with authority to sell electricity to retail electric consumers within its service area; and

WHEREAS, Purchaser is agreeable to purchasing a portion of its Energy requirements from Issuer under the terms and conditions set forth in this Agreement and Issuer is agreeable to selling to Purchaser such supplies of Energy under the terms and conditions set forth in this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser has assigned to Prepay LLC certain Assigned Rights and Obligations, including the right to receive Assigned Product, which Assigned Product will be delivered to Issuer under the Prepaid Agreement and then resold by Issuer hereunder; and

WHEREAS, as a condition precedent to the effectiveness of the Parties' obligations under this Agreement, Issuer shall have entered into the Prepaid Agreement and shall have issued the Bonds.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Issuer and Purchaser (the "<u>Parties</u>" hereto; each is a "<u>Party</u>") agree as follows:

ARTICLE I DEFINITIONS

- Section 1.1 <u>Defined Terms</u>. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:
- "Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.
- "Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto and all amendments, supplements and modifications hereto and thereto.
- "Annual Quantity" means, with respect to each Contract Year of the Delivery Period, the quantity (in MWh) of Assigned Product for such Contract Year as set forth on Exhibit A-3; provided that the Annual Quantity for any Contract Year shall be reduced by the aggregate amount of any quantities of Base Energy required to be remarketed under this Agreement for any given Contract Year.
- "Annual Refund" means the annual refund, if any, provided to Purchaser and calculated pursuant to the procedures specified in Section 3.2(b).
- "Applicable Rating Agencies" means, at any given time, each Rating Agency then rating the Bonds.
- "Assigned Delivery Point" has the meaning specified in the applicable Assignment Agreement.
- "Assigned Energy" has the meaning specified in the applicable Assignment Agreement; provided that any Assigned Energy shall be EPS Compliant Energy as set forth in the Assignment Letter Agreement.
- "Assigned Paygo Quantity" means any Assigned Products delivered under this Agreement in excess of the Annual Quantity for any Contract Year.
 - "Assigned PPA" has the meaning specified in the Participant Custodial Agreement.
- "<u>Assigned PPA Index Adder</u>" means the amount (in \$/MWh) specified in <u>Exhibit</u> <u>A-2</u> for each Month of the Delivery Period.

"Assigned Product" means, as applicable, PCC1 Product, Long-Term PCC1 Product, PCC2 Product, Assigned Energy, Assigned RECs and any other product included in an Assignment Agreement.

"Assigned RECs" means any RECs to be delivered to MSCG or Prepay LLC pursuant to any Assigned Rights and Obligations.

"Assigned Rights and Obligations" means a portion of Purchaser's rights and obligations under a power purchase agreement assigned pursuant to an Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"<u>Assignment Letter Agreement</u>" means that certain Letter Agreement, dated as of the date hereof, by and among MSCG, Prepay LLC, Issuer and Purchaser.

"Assignment Period" has the meaning specified in the applicable Assignment Agreement.

"Available Discount" means, for each Reset Period, the amount, expressed in cents per MWh (rounded down to the nearest one-half cent), determined by the Calculation Agent pursuant to the Re-Pricing Agreement for such Reset Period. The Available Discount shall equal the sum of the Monthly Discount and any anticipated Annual Refunds for the applicable Reset Period.

"Balancing Authority" has the meaning specified in the CAISO Tariff.

"Base Energy" means Firm (LD) Energy.

"Billing Date" has the meaning specified in Section 14.1(b).

"Billing Statement" has the meaning specified in Section 14.1(b).

"Bond Closing Date" means the first date on which the Bonds are issued pursuant to the Bond Indenture.

"Bond Indenture" means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Issuer and the Trustee, as supplemented and amended from time to time in accordance with its terms, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Issuer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

"Bonds" means the bonds issued pursuant to the Bond Indenture.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks in either New York,

New York or the State of California are authorized or required by Law to close, or (iv) any other day excluded pursuant to the Bond Indenture.

"CAISO" means California Independent System Operator or its successor.

"CAISO Tariff" means CAISO's FERC-approved tariff, as modified, amended or supplemented from time to time.

"Calculation Agent" has the meaning specified in the Re-Pricing Agreement.

"<u>California Long-Term Contracting Requirements</u>" means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

"<u>CCA Revenues</u>" means all charges received for, and all other income and receipts derived by Purchaser from, the operation of its CCA System, including income derived from the sale of electric energy by its CCA System.

"CCA System" means Purchaser's community choice aggregation program that provides electric energy supply service to retail customers located with its service area.

"Claiming Party" has the meaning specified in Section 11.1.

"Claims" means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"Clean Energy Project" has the meaning specified in the recitals.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

"Contract Price" means (i) with respect to Monthly Projected Quantities, (A) the Day-Ahead Average Price, minus (B) the Monthly Discount; and (ii) with respect to Monthly Excess Quantities and Assigned Paygo Quantities, the Day-Ahead Average Price. For the avoidance of doubt, the Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

"Contract Quantity" means (i) with respect to Assigned Energy, the Annual Quantity of Assigned Energy for each Contract Year of the Delivery Period; and (ii) with respect to Base Energy, the Hourly Quantity of Base Energy set forth in Exhibit A-1 for any Month, as such Exhibits A-1 and A-2 shall be updated from time to time in accordance with Section 6.2.
"Contract Year" means each period of 12 Months from [] 1 until [] [31] during the Delivery Period. 1
"Day-Ahead Average Price" means, for any Assigned Energy in any EPS Energy Period, the result of (i) (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month plus (ii) the Assigned PPA Index Adder for the relevant Month. As used in this definition, "Pricing Interval" means each unit of time for which CAISO establishes a separate price.
" <u>Day-Ahead Market Price</u> " means The Day Ahead Market or Locational Marginal Price for the Energy Delivery Point for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by such independent system operator or other entity in accordance with its rules.
" <u>Default Rate</u> " means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the "Money Rates" section as the "Prime Rate" for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.
" <u>Delivery Hours</u> " means each Hour commencing at 00:00 (PPT) on the first day of the Delivery Period, and each Hour thereafter during the Delivery Period.
" <u>Delivery Period</u> " means the period beginning on [] and ending on []; provided that the Delivery Period shall end immediately upon the effective termination date of the Prepaid Agreement or early termination of this Agreement pursuant to <u>Article XVII</u> hereof.
"Delivery Point" means (i) the applicable Assigned Delivery Point(s) for Assigned Energy and (ii) the applicable Energy Delivery Point for Base Energy (as set forth in Exhibits A- $\underline{1}$ and $\underline{A-2}$).
"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWhs.
"Energy Delivery Point" has the meaning specified in Exhibit A-1.
"EPS" means California's Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

¹ NTD: Parties to confirm.

"EPS Compliant Energy" means Energy that Purchaser can contract for and purchase in compliance with EPS requirements that are applicable to Purchaser.

"EPS Energy Period" means the Initial EPS Energy Period and any subsequent Assignment Period established by a future assignment of a power purchase agreement consistent with the Assignment Letter Agreement.

"Execution Date" has the meaning specified in the preamble.

"<u>Federal Tax Certificate</u>" means the executed Federal Tax Certificate delivered by Purchaser in the form attached as Exhibit D.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Firm (LD)" means, with respect to the obligation to deliver Energy, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Purchaser's markets; (ii) Purchaser's inability economically to use or resell the Energy purchased hereunder; (iii) the loss or failure of Issuer's supply except if such loss or failure results from curtailment by a Transmission Provider; or (iv) Issuer's ability to sell the Energy at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (a) such Party has contracted for firm transmission with such Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (b) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; *provided*, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that Force Majeure as defined in the first sentence hereof has occurred. Notwithstanding the foregoing or anything to the contrary herein, (I) any invocation of Force Majeure by Prepay LLC under the Prepaid Agreement shall constitute Force Majeure in respect of Issuer hereunder; (II) to the extent that (x) a PPA Supplier fails to deliver any Assigned Energy and claims force majeure with respect to such failure to deliver or (y) a PPA Supplier otherwise is unable to deliver any portion of the Annual Quantity due to an event that would be considered Force Majeure under this Agreement if it affected Issuer directly, then such event shall be deemed to constitute Force Majeure in respect of Issuer hereunder; and (III) to the extent that an Assignment Agreement is terminated early, such termination shall constitute Force Majeure with respect to Issuer until the earlier of (A) the commencement of an "Assignment Period" under a replacement Assignment Agreement, (B) the commencement of the delivery of EPS Compliant Energy procured by MSCG

consistent with the Assignment Letter Agreement or (C) the end of the second Month following the Month in which such early termination occurs.

"Government Agency" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"Hour" means each 60-minute period commencing at 00:00 PPT during the Delivery Period. The term "Hourly" shall be construed accordingly.

"Hourly Quantity" means, with respect to each Delivery Hour during the Delivery Period, the quantity (in MWh) of Base Energy set forth on Exhibit A-1 for the Month in which such Delivery Hour occurs (as such Exhibit A-1 may be updated from time to time in accordance with Section 6.2).

"<u>Initial Assignment Agreement</u>" means that certain Limited Assignment Agreement, dated on or around the Bond Closing Date, by and among Purchaser, Prepay LLC and the Initial PPA Supplier.

"<u>Initial EPS Energy Period</u>" means the "Assignment Period" as defined in the Initial Assignment Agreement.

"Initial PPA Supplier" means MSCG.

"Initial Reset Period" means the period beginning on [] and ending on [].

"Interest Rate Period" has the meaning specified in the Bond Indenture.

"Issuer" has the meaning specified in the preamble.

"Issuer Default" has the meaning specified in Section 17.1.

"<u>Law</u>" means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time in the future.

"Long-Term PCC1 Product" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to MSCG, Prepay LLC or any successors thereto pursuant to any Assigned Rights and Obligations.

"Minimum Discount" means no less than \$[____] per MWh for each Reset Period after the Initial Reset Period. Such amount is inclusive of any projected Annual Refund.

"Month" means, during the Delivery Period, a calendar month. The term "Monthly" shall be construed accordingly.

"Monthly Discount" means (i) for the Initial Reset Period, an amount (when taken together with any Annual Refund) that is not less than the Minimum Discount and is specified in Exhibit F, which Exhibit F shall be provided by Issuer to Purchaser on the Bond Closing Date, and (ii) for each subsequent Reset Period, a portion of the Available Discount for such Reset Period determined by the Calculation Agent pursuant to the Re-Pricing Agreement and set forth in an updated Exhibit F provided by Issuer after such determination.

"Monthly Excess Quantity" means, for any Month, the amount, if any, by which the total quantity (in MWh) of Assigned Product delivered under an Assigned PPA in such Month exceeds the Monthly Projected Quantity for such Assigned PPA for such Month.

"Monthly Projected Quantity" means, with respect to each Assigned PPA and each Month of the Assignment Period for each Assigned PPA, the quantity (in MWh) of Assigned Product for such Month as set forth on Exhibit A-2 for such Assigned PPA (as such Exhibit A-2 may be updated from time to time in accordance with Section 6.2).

"MSCG" means Morgan Stanley Capital Group Inc., a Delaware corporation.

"MWh" means megawatt-hour.

"Non-Priority Energy" means Energy that is not Priority Energy.

"Participant Custodial Agreement" means that certain Amended & Restated Custodial Agreement, dated as of the Bond Closing Date, by and among Purchaser, Issuer, Energy Prepay IV, LLC, MSCG and the Participant Custodian.

"<u>Participant Custodian</u>" means U.S. Bank Trust Company, National Association, a national banking association.

"Party" has the meaning specified in the recitals.

"<u>PCC1 Product</u>" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to MSCG, Prepay LLC or any successors thereto pursuant to any Assigned Rights and Obligations.

"<u>PCC2 Product</u>" means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 2 to be delivered to MSCG, Prepay LLC or any successors thereto pursuant to any Assigned Rights and Obligations.

"<u>Person</u>" means any individual, limited liability company, corporation, partnership, joint venture, trust, unincorporated organization or Government Agency.

"<u>Portfolio Content Category 1</u>" 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.

"Portfolio Content Category 2" 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

"Potential Remarketing Event" has the meaning specified in Section 3.4(b).

"PPA Supplier" means the Initial PPA Supplier and any subsequent supplier who enters into an Assignment Agreement consistent with the terms of the Assignment Letter Agreement.

"PPT" means Pacific Prevailing Time.

"Prepaid Agreement" has the meaning specified in the recitals.

"Prepay LLC" has the meaning specified in the recitals.

"Priority Energy" means the Contract Quantity to be purchased by Purchaser under this Agreement, together with Energy that Purchaser is obligated to take under a long-term agreement, which Energy either (i) has been purchased by Purchaser or a joint action agency in a prepayment transaction using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes, or (ii) is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from gross income for federal income tax purposes (provided that, with respect to clause (ii), Priority Energy shall not include Energy that is generated using capacity that was wholly or partially financed through the monetization of renewable tax credits, whether such monetization is accomplished through a tax equity investment or otherwise, or that is generated from federally owned and operated hydroelectric facilities, including through the United States Army Corps of Engineers and the United States Bureau of Reclamation, and marketed by the Bonneville Power Administration or the Western Area Power Administration).

"Project Participant" has the meaning specified in the Bond Indenture.

"Purchaser" has the meaning specified in the preamble.

"Purchaser Default" has the meaning specified in Section 17.2.

"Purchaser's Statement" has the meaning specified in Section 14.1(a).

"Qualifying Use Requirements" means, with respect to any Energy delivered under this Agreement, such Energy is used (i) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

"Rating Agency" has the meaning specified in the Bond Indenture.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the Bond Closing Date, by and between Issuer and Prepay LLC.

"Remarketing Election Deadline" means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice, which shall be 4:00 p.m. PPT on the 10th day of the Month (or, if such day is not a Business Day, the next succeeding Business Day) prior to the first delivery Month of a Reset Period with respect to which a Potential Remarketing Event has occurred.

"Remarketing Election Notice" has the meaning specified in Section 3.4(b).

"Renewable Energy Credit" or "REC" has the meaning specified for "Renewable Energy Credit" 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.

"Reset Period" means each "Reset Period" under the Re-Pricing Agreement.

"Reset Period Notice" has the meaning specified in Section 3.4(a).

"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.

"Schedule", "Scheduled" or "Scheduling" means the actions of Issuer, Purchaser and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"<u>Transmission Provider(s)</u>" means any entity or entities transmitting or transporting Energy on behalf of Issuer or Purchaser to or from the Delivery Point.

"<u>Trustee</u>" means U.S. Bank Trust Company, National Association, a national banking association, and its successors as Trustee under the Bond Indenture.

"Voided Remarketing Election Notice" has the meaning specified in Section 3.4(b).

"<u>WREGIS</u>" means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 <u>Definitions</u>; <u>Interpretation</u>. References to "Articles," "Sections," "Schedules" and "Exhibits" shall be to Articles, Sections, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following

any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the scope of such general statement, term or matter. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

ARTICLE II EXECUTION DATE AND DELIVERY PERIOD; NATURE OF CLEAN ENERGY PROJECT

- Section 2.1 <u>Execution Date; Delivery Period</u>. Unless this Agreement is terminated pursuant to <u>Article XVII</u>, delivery of Energy under this Agreement shall commence and continue for the Delivery Period.
- Section 2.2 <u>Termination Due to Failure to Issue Bonds</u>. Each Party shall have a right to terminate this Agreement with the effect that this Agreement shall be of no further force or effect and the Parties shall have no rights or obligations hereunder if the Bonds are not issued on or before the Prepayment Outside Date (as defined in the Prepaid Agreement).
- Section 2.3 <u>Nature of Clean Energy Project</u>. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Energy to Purchaser under this Agreement exclusively through its purchase of long-term supplies of Energy from Prepay LLC pursuant to the Clean Energy Project and that Issuer is financing its purchase of such long-term supplies through the issuance of the Bonds.
- Section 2.4 <u>Pledge of this Agreement</u>. Purchaser acknowledges and agrees that Issuer will pledge its right, title, and interest under this Agreement and the revenues to be received under this Agreement to secure Issuer's obligations under the Bond Indenture.

ARTICLE III SALE AND PURCHASE

Section 3.1 <u>Sale and Purchase of Energy</u>. Issuer agrees to sell and deliver or cause to be delivered to Purchaser, and Purchaser agrees to purchase and take or cause to be taken from Issuer, in each case, on a Firm (LD) basis, the Contract Quantity of Energy pursuant to the terms and conditions set forth in this Agreement. The Parties acknowledge and agree that Issuer's delivery obligation for (i) Assigned Products will be measured on an annual basis and (ii) Base Energy will be measured on an Hourly basis, as reflected in the definition of Contract Quantity and further set forth in the terms of this Agreement.

Section 3.2 Payments.

(a) For each MWh of Assigned Product delivered to Purchaser, Purchaser shall pay Issuer the applicable Contract Price, provided that (x) Issuer shall owe a payment to Purchaser

to the extent that the Contract Price for Energy delivered is negative and (y) Purchaser's payment of the Retained Payment Amount (as defined in the Participant Custodial Agreement) to the Participant Custodian consistent with the terms of the Participant Custodial Agreement shall satisfy Purchaser's obligations hereunder with respect to Monthly Excess Quantities and Assigned Paygo Quantities, as applicable.

(b) During the term of this Agreement, promptly following completion of the annual audit of Issuer's financial statements at the end of each fiscal year (currently the twelve-month period ending December 31), Issuer shall compare its revenues (as determined in accordance with the Bond Indenture) and expenses under the Clean Energy Project for that fiscal year. If this annual comparison demonstrates that such revenues exceeded such expenses during the applicable fiscal year and there are amounts on deposit in the fund established by the Bond Indenture available for such purpose, then Issuer shall make refunds to Purchaser in the amount available after making allowances for any necessary and appropriate reserves and contingencies (including but not limited to amounts deemed reasonably necessary by Issuer to fund any working capital reserve and to reserve or account for unfunded liabilities, including future sinking fund or other principal amortization of the Bonds). As of the Execution Date, the projected Annual Refund for (i) the period from [____] through and including [____] is \$[__]/MWh and (ii) the period from [____] until the end of the Initial Reset Period is \$[__]/MWh.

Section 3.3 <u>No Obligation to Take Base Energy</u>. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Energy hereunder, and Issuer shall cause Prepay LLC to remarket any portion of the Contract Quantity that is Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement.

Section 3.4 Reset Period Remarketing.

- (a) Reset Period Notice. For each Reset Period, Issuer shall provide to Purchaser, at least ten (10) days prior to the Remarketing Election Deadline, formal written notice setting forth (i) the duration of such Reset Period, (ii) the Estimated Available Discount (as defined in the Re-Pricing Agreement) for such Reset Period, and (iii) the applicable Remarketing Election Deadline (a "Reset Period Notice"). Issuer may thereafter update such notice at any time prior to the Remarketing Election Deadline and may extend the Remarketing Election Deadline in its sole discretion in any such update.
- (b) Remarketing Election. If the Reset Period Notice (or any update thereto) indicates that the Available Discount in such notice is not at least equal to the Minimum Discount for that Reset Period, then: (i) a "Potential Remarketing Event" shall be deemed to exist, and (ii) Purchaser may, not later than the Remarketing Election Deadline, issue a written notice in the form attached hereto as Exhibit C (a "Remarketing Election Notice") to Issuer, Prepay LLC and the Trustee electing for all of Purchaser's Energy that would otherwise be delivered hereunder to be remarketed during the applicable Reset Period; provided, however, if the actual Available Discount, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount, then Issuer may, in its sole discretion, elect by written notice to Purchaser to treat such Remarketing Election Notice as void (a "Voided Remarketing Election Notice"). For the avoidance of doubt, in the event that Purchaser issues a Remarketing Election Notice (other than a Voided Remarketing Notice), any rights and obligations assigned to Prepay LLC or MSCG,

as applicable, under the Initial Assignment Agreement or a subsequent Assignment Agreement including, without limitation, the right to receive Assigned Energy, shall revert to Purchaser as of the end of the Initial Reset Period or the then-current Reset Period, as applicable.

- (c) <u>Final Determination of Available Discount</u>. The Parties acknowledge and agree that the final Available Discount for any Reset Period following the Initial Reset Period will be determined on the applicable Re-Pricing Date (as defined in the Re-Pricing Agreement), and that such Available Discount may differ from the estimate or estimates of such Available Discount provided to Purchaser prior to the applicable Remarketing Election Deadline. Accordingly, the Parties agree that:
 - (i) the Available Discount for any Reset Period will not be less than the Minimum Discount applicable to such Reset Period, unless Issuer has provided notice of a Potential Remarketing Event to Purchaser in accordance with <u>Section 3.4(b)</u>; and
 - (ii) if Purchaser receives notice of a Potential Remarketing Event and has not provided a Remarketing Election Notice prior to the applicable Remarketing Election Deadline, Purchaser shall be deemed to have elected to continue to purchase and receive its Contract Quantity at a Contract Price that reflects the Monthly Discount portion of the Available Discount as finally determined on the applicable Re-Pricing Date, plus Purchaser's right to its share of Annual Refunds, if any, and all delivery and purchase obligations under this Agreement shall continue in full force and effect for the applicable Reset Period.
- Remarketing Election Notice for a Reset Period, Purchaser will (i) remain obligated to purchase the Contract Quantities hereunder for each subsequent Reset Period, unless Purchaser issues a new valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any such Reset Period in accordance with Section 3.4(b) and (ii) not make any new commitment to purchase Priority Energy during such Reset Period to the extent any such commitment could reasonably be expected to cause, during any portion of the Delivery Period after such Reset Period, Purchaser's aggregate obligations to purchase Priority Energy (including its obligation to purchase Priority Energy hereunder) to exceed Purchaser's expected aggregate requirements for Energy that will be used (A) for a "qualifying use" as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (B) in a manner that will not result in any "private business use" within the meaning of Section 141 of the Code.
- (e) Reduction of Contract Quantity. The Parties recognize and agree that the Contract Quantity may be reduced in a Reset Period pursuant to the re-pricing methodology described in the Re-Pricing Agreement if necessary to achieve a successful remarketing of the Bonds. The Parties agree further that if, pursuant to the Re-Pricing Agreement, Issuer and the Calculation Agent determine in connection with the establishment of any new Reset Period that: (i) such Reset Period will be the final Reset Period and (ii) such Reset Period will end prior to the end of the original Delivery Period, then (A) Issuer will notify Purchaser, (B) the Delivery Period will be deemed to be modified so that it ends at the end of such Reset Period, and (C) the Contract Quantity for the last Month in such Reset Period may be reduced as provided in the Re-Pricing Agreement.

ARTICLE IV FAILURE TO DELIVER OR TAKE ENERGY

Notwithstanding anything herein to the contrary, neither Purchaser nor Issuer shall have any liability or other obligation to one another for any failure to Schedule, take, or deliver Assigned Product.

ARTICLE V TRANSMISSION AND DELIVERY; COMMUNICATIONS

- Section 5.1 <u>Delivery of Energy</u>. All Assigned Energy delivered under this Agreement shall be Scheduled at the applicable Assigned Delivery Point and in accordance with the terms of the applicable Assignment Agreement. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement. Except as set forth in the two foregoing sentences, Purchaser and Issuer shall have no liability or obligations under this <u>Article V</u> with respect to Assigned Product.
- Section 5.2 <u>Scheduling</u>. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Agreement.
- Section 5.3 <u>Title and Risk of Loss</u>. Title to the Energy delivered under this Agreement and risk of loss shall pass from Issuer to Purchaser at the Assigned Delivery Point. The transfer of title and risk of loss for all Assigned Product other than Assigned Energy shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS.
- Section 5.4 <u>PCC1 Product, Long-Term PCC1 Product</u>, and PCC2 Product. To the extent that any Assigned Product is PCC1 Product, Long-Term PCC1 Product, or PCC2 Product the following provisions apply:
- (a) <u>Eligibility</u>. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Clean Energy Project 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 Clean Energy 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. (Source: D.07-11-025, Attachment A.) D.08-04-009]. As used above, "Seller" means "Issuer", Buyer means "Purchaser", and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assignment Agreement.
- (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, Non-modifiable. D.11-01-025]. As used above, "Seller" means "Issuer", Buyer means "Purchaser", and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assignment Agreement.

- (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 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]. As used above, "Seller" means "Issuer", Buyer means "Purchaser", and any other capitalized terms not otherwise defined herein shall have the meaning specified in the Assignment Agreement.
- (d) 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, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]
 - (e) <u>Issuer Representations and Warranties</u>.

Issuer represents and warrants:

- (i) Issuer has the right to sell the Assigned Product from the Applicable Project;
- (ii) Issuer has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Purchaser to any other person or entity;
- (iii) the Energy component of the Assigned Product produced by the Applicable Project for PCC2 Product and purchased by Issuer for resale to Purchaser hereunder is not being sold by Issuer back to the Applicable Project or PPA Supplier;
- (iv) Assigned Energy and Assigned RECs to be purchased and sold pursuant to this Agreement are not committed to another party;
- (v) the Assigned Product is free and clear of all liens or other encumbrances;
- (vi) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for PCC2 Product in compliance with the requirements set forth in California Public Utilities Code 399.16(b)(2) and the California RPS compliance requirements for Portfolio Content Category 2 as set forth in CPUC Decision 11-12-052, if applicable;

- (vii) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for PCC2 Product in compliance with the requirements set forth in California Public Utilities Code 399.16(b)(2) and the California RPS compliance requirements for Portfolio Content Category 2 as set forth in CPUC Decision 11-12-052, if applicable;
- (viii) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1

 Product in compliance with the California Long-Term Contracting Requirements, if applicable;
- (ix) the Assigned Product supplied to Purchaser under this Agreement that is <u>Long-Term PCC1 Product</u> will be sourced solely from Applicable Projects that have an Assignment Period of ten (10) years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and
- (x) Issuer will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as Portfolio Content Category 1 or Portfolio Content Category 2, as applicable, as set forth in California Public Utilities Code Section 399.16(b)(1) or 399.16(b)(2), as applicable, and compliance with the California Long-Term Contracting Requirements, if applicable.

Issuer further represents and warrants to Purchaser that, to the extent that the PCC1 Product sold by Issuer is a resale of part or all of a contract between Issuer and one or more third parties, Issuer represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below during the Assignment Period and throughout the generation period:

- (i) the original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);
- (ii) this Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;
- (iii) the electricity transferred by this Agreement is transferred to Purchaser in real time; and
- (iv) if the Applicable Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

Issuer further represents and warrants to Purchaser that, to the extent that the PCC2 Product sold by Issuer is a resale of part or all of a contract between Issuer and one or more third parties, Issuer represents, warrants and covenants that the resale

complies with the following conditions in (i) through (v) below during the Assignment Period and throughout the generation period:

- (i) the original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(2);
- (ii) this Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;
- (iii) this Agreement transfers the original arrangement for substitute electricity (e.g., source and quantity);
- (iv) this Agreement retains the scheduling of the substitute electricity into a California balancing authority as set out in the original firming and shaping transaction; and
- (v) this Agreement continues to provide incremental electricity scheduled into a California balancing authority.
- (f) <u>Subsequent Changes in Law.</u> In the event that the qualifications or requirements of the RPS program, PCC1 Product, PCC2 Product or the California Long-Term Contracting Requirements change, Issuer shall take commercially reasonable actions to meet the amended qualifications or requirements of the RPS Law, PCC1 Product, PCC2 Product or the California Long-Term Contracting Requirements but will not be required to incur any unreimbursed costs to comply with the RPS Law, PCC1, PCC2 or the California Long-Term Contracting Requirements, collectively.
- (g) Limitations. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree as follows:
 - (i) Issuer has relied exclusively upon the representations and warranties of each respective seller set forth in the Assignment Agreements in making the representations and warranties set forth in this <u>Section 5.4</u> and has not performed any independent investigation with respect thereto;
 - (ii) Prepay LLC has agreed under the Prepaid Agreement to terminate or cause MSCG to terminate the applicable Assignment Period in the event that any representation or warranty in this <u>Section 5.4</u> proves to be incorrect in any respect; and
 - (iii) Purchaser agrees that its sole recourse for any breach of the provisions of this <u>Section 5.4</u> shall be the termination of the applicable Assignment Period and Purchaser shall have no other recourse against Issuer or remedies under this Agreement.
- Section 5.5 <u>Deliveries within CAISO or Another Balancing Authority</u>. The Parties acknowledge that Energy delivered by Issuer at a Delivery Point within CAISO or another Balancing Authority will be delivered in accordance with the CAISO Tariff and rules of the

Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Energy into the applicable Balancing Authority shall constitute delivery of such Energy to Purchaser hereunder.

Section 5.6 <u>Assigned Products</u>. Notwithstanding anything to the contrary herein, the Parties shall have no liability under this <u>Article V</u> with respect to any Assigned Products.

ARTICLE VI PARTIAL ASSIGNMENTS OF PPAS

Section 6.1 <u>Future PPA Assignments</u>. In connection with the expiration or termination of an EPS Energy Period, each of the Parties agrees to satisfy its obligations under the Assignment Letter Agreement, including but not limited to (a) Purchaser's obligation to exercise Commercially Reasonable Efforts to assign a portion of Purchaser's rights and obligations under a power purchase agreement under which Project Participant is purchasing EPS Compliant Energy to MSCG or Prepay LLC pursuant to an Assignment Agreement and (b) the Parties' obligations to cooperate in good faith with MSCG and Prepay LLC with respect to any proposed assignments.

Section 6.2 <u>Updates to Exhibits A-1 and A-2.</u>

- (a) To the extent that an EPS Energy Period terminates early, the Parties shall update (i) Exhibit A-1 to reflect an increase in the Hourly Quantities and (ii) Exhibit A-2 to reflect a decrease in the Monthly Projected Quantities associated with the relevant Assigned PPA, in each case, in an amount equal to the Assigned Energy associated with the EPS Energy Period that terminated or expired. For the avoidance of doubt, any updates to Exhibits A-1 and A-2 due to an early termination of an EPS Energy Period shall be effective as of the earlier of (A) the commencement of an Assignment Period under a replacement Assignment Agreement or (B) the start of the third Month following the Month in which such early termination occurs.
- (b) In connection with the execution of any subsequent Assignment Agreement, the Parties shall update Exhibits A-1 and A-2 to reflect any changes in the Hourly Quantities of Base Energy and Monthly Projected Quantities of Assigned Energy and any other changes in connection therewith.

ARTICLE VII USE OF ENERGY

Section 7.1 <u>Tax Exempt Status of the Bonds</u>. Purchaser acknowledges that the Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its CCA System as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Purchaser further agrees that it will not at any time take any action, or fail to take any action, that would adversely affect the tax-exempt status of the Bonds.

Section 7.2 <u>Priority Energy</u>. Subject to <u>Section 7.5(a)</u>, Purchaser agrees to take the Contract Quantities to be delivered under this Agreement (a) in priority over and in preference to all Non-Priority Energy; and (b) on at least a *pari passu* and non-discriminatory basis with other Priority Energy.

Section 7.3 <u>Remarketing Sales</u>.

- (a) Remarketing of Assigned Product. If notwithstanding Purchaser's compliance with Section 7.2, a quantity of Assigned Product less than the Annual Quantity is delivered hereunder in any Contract Year for any reason other than Force Majeure, then MSCG shall be deemed to remarket such undelivered quantity of Assigned Product consistent with Section 5(a) of Exhibit C to the Prepaid Agreement. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Assigned Energy that is remarketed pursuant to the foregoing sentence.
- (b) Remarketing of Base Energy. Consistent with Section 3.3, to the extent any portion of the Contract Quantity is Base Energy, Issuer shall cause Prepay LLC to remarket or purchase such Energy for the account of Prepay LLC under the remarketing provisions of the Prepaid Agreement, and Issuer shall credit against the amount owed by Purchaser for such Contract Quantities the amounts received from Prepay LLC for such remarketing services, less all directly incurred costs or expenses, including but not limited to remarketing administrative charges paid to Prepay LLC under the Prepaid Agreement, but in no event shall the amount of such credit be more than the Contract Price. For the avoidance of doubt, Purchaser will not have any payment obligation with respect to Base Energy that is remarketed pursuant to the foregoing sentence.
- (c) <u>Prepay LLC Remarketing Fees</u>. Purchaser shall not in any case have an obligation to make a payment to Issuer with respect to any Remarketing Fee (as defined in the Prepaid Agreement) charged by Prepay LLC under the Prepaid Agreement.
- Section 7.4 <u>Qualifying Use</u>. Subject to <u>Section 7.5</u>, Purchaser agrees that, without limiting Purchaser's other obligations under this <u>Article VII</u>, it will use all of the Energy purchased under this Agreement in compliance with the Qualifying Use Requirements. Purchaser agrees that it will provide such additional information, records and certificates as Issuer may reasonably request to confirm Purchaser's compliance with this <u>Section 7.4</u>.
- Section 7.5 <u>Remediation</u>. To the extent that (a) all or a portion of the Contract Quantity is remarketed under <u>Section 7.3(a)</u> or <u>Section 7.3(b)</u> and (b) Purchaser is not otherwise in default under this Agreement, then:
- (a) Prepay LLC shall be obligated under the remarketing provisions of the Prepaid Agreement to purchase the remarketed Energy for its own account at the applicable price specified in Exhibit C to the Prepaid Agreement (the proceeds of any such purchases, "<u>Disqualified Remarketing Proceeds</u>"), which Disqualified Remarketing Proceeds are for the benefit of Purchaser in that such proceeds reduce its payment obligations hereunder;
- (b) Purchaser shall (i) exercise Commercially Reasonable Efforts to use an amount equivalent to such Disqualified Remarketing Proceeds to purchase Non-Priority Energy and use such Non-Priority Energy in compliance with the Qualifying Use Requirements in order

to remediate such Disqualified Remarketing Proceeds and (ii) apply its purchases of Non-Priority Energy to remediate Disqualified Remarketing Proceeds under this Agreement prior to remediating such proceeds under any other contract that provides for the purchase of Priority Energy;

- (c) in order to track compliance with Purchaser's obligations under <u>Section 7.5(b)</u> above, Purchaser shall deliver a Remediation Certificate in the form of <u>Exhibit H</u> hereto to Issuer and Prepay LLC by the tenth (10th) day of the Month subsequent to any relevant Non-Priority Energy purchases (which may include purchases of Energy from CAISO to the extent such Energy is used in compliance with the Qualifying Use Requirements);
- (d) for Disqualified Remarketing Proceeds remediated under this Section 7.5, Issuer shall pay Purchaser any portion of Monthly Discount associated with such Disqualified Remarketing Proceeds and available for distribution under the Bond Indenture on the last Business Day of the Month following the Month in which Purchaser provides a certificate under clause (c) evidencing such remediation; and
- (e) to the extent any Disqualified Remarketing Proceeds are not remediated within twelve (12) Months of the date on which such proceeds were received by Issuer, then Prepay LLC shall be obligated under the Prepaid Agreement to exercise Commercially Reasonable Efforts to remediate such Disqualified Remarketing Proceeds under the Prepaid Agreement and Purchaser's ability to remediate such remarketing proceeds shall be subject to Prepay LLC's successful remediation of such proceeds through sales to other purchaser(s);

provided that, for the avoidance of doubt, to the extent Special Tax Counsel (as defined in the Bond Indenture) determines at any time that Purchaser has failed to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for delivery hereunder consistent with the Assignment Letter Agreement, then Purchaser shall not be entitled to remediate any Disqualified Remarketing Proceeds related to the resulting remarketing of Base Energy by Prepay LLC.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS

- Section 8.1 <u>Representations and Warranties of the Parties</u>. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:
- (a) for Issuer as the representing Party, Issuer is a is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code;
- (b) for Purchaser as the representing Party, Purchaser is a joint powers authority organized pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code and a community choice aggregator pursuant to the provisions of Section 366.2 of the California Public Utilities Code, duly organized and validly existing under the Laws of the State of California;

- (c) it has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement;
- (d) there is no litigation, action, suit, proceeding or investigation pending or, to the best of such Party's knowledge, threatened, before or by any Government Agency, which could reasonably be expected to materially and adversely affect the performance by such Party of its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;
- (e) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary action on the part of such Party and does not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;
- (f) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;
- (g) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, decree or other legal or regulatory determination applicable to it;
- (h) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law or ordinance applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Issuer, the lien of the Bond Indenture;
- (i) to the best of the knowledge and belief of such Party, no consent, approval, order or authorization of, or registration, declaration or filing with, or giving of notice to, obtaining of any license or permit from, or taking of any other action with respect to, any Government Agency is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those that have been obtained; and
- (j) it enters this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 <u>Warranty of Title</u>. Issuer warrants that it will have the right to convey and will transfer good and merchantable title to all Energy sold under this Agreement and delivered by it to Purchaser, free and clear of all liens, encumbrances, and claims.

Section 8.3 <u>Disclaimer of Warranties</u>. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS <u>ARTICLE VIII</u>, ISSUER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.4 <u>Continuing Disclosure</u>. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer including its most recent audited financial statements for use in Issuer's offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its continuing disclosure undertakings under Rule 15(c)2-12 of the United States Securities and Exchange Commission. Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

ARTICLE IX TAXES

Issuer shall (i) be responsible for all ad valorem, excise and other taxes assessed with respect to Energy delivered pursuant to this Agreement upstream of the Delivery Point, and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. Purchaser shall (i) be responsible for all such taxes assessed at or downstream of the Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates.

ARTICLE X DISPUTE RESOLUTION

Section 10.1 <u>Arbitration</u>. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("<u>JAMS</u>") pursuant to its Comprehensive Arbitration Rules and Procedures. Within 15 days after the commencement of arbitration, each of the Parties shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "<u>chairperson</u>") within 30 days of the commencement of the arbitration. If either Party is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Party-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct pecuniary interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by each of the Parties. The Parties shall maintain

the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 10.1 and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10.1, any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

Section 10.2 Judicial Reference.

- (a) <u>Judicial Reference</u>. Without limiting the provisions in <u>Section 10.1</u>, if <u>Section 10.1</u> is ineffective or unenforceable, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "<u>Dispute</u>") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("<u>CCP</u>"), or their successor sections (a "<u>Reference Proceeding</u>"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of <u>Section 10.2(b)</u>.
- (b) <u>Notice of Dispute</u>. Prior to initiating the Reference Proceeding, a Party (the "<u>Disputing Party</u>") shall provide the other Party (the "<u>Responding Party</u>") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "<u>Notice of Dispute</u>"). Within 10 days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "<u>Dispute Response</u>"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by mutual agreement within 60 days after receipt of the Dispute Response, (the "<u>Negotiation Period</u>"), then either Party may provide to the other Party written notice of intent for judicial reference (the "<u>Impasse Notice</u>") in accordance with the further provisions of this Section 10.2.

(c) Applicability; Selection of Referees.

- (i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one referee within 10 days of receiving the Impasse Notice. The two (2) referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least 10 years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.
- (ii) If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

- (i) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.
- (ii) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.
- (iii) Any matter before the Referees shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referees. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

- (iv) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.
- (e) <u>Decision</u>. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- (f) <u>Expenses</u>. Each Party shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between the Parties.

ARTICLE XI FORCE MAJEURE

Section 11.1 <u>Applicability of Force Majeure</u>. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "<u>Claiming Party</u>") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall mitigate the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 <u>Settlement of Labor Disputes</u>. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

ARTICLE XII GOVERNMENTAL RULES AND REGULATIONS

Section 12.1 <u>Compliance with Laws</u>. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction over this Agreement or the transactions to be undertaken hereunder, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; *provided*, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the

transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 <u>Contests</u>. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance by either Party of this Agreement or any provision hereunder.

Section 12.3 <u>Defense of Agreement</u>. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would otherwise materially affect the rights or obligations of the Parties under this Agreement.

ARTICLE XIII ASSIGNMENT

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; provided, however, that, subject to Section 18.14, neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement without the prior written consent of the other Party. Prior to assigning this Agreement, Purchaser shall deliver to Issuer (i) written confirmation from each of the Applicable Rating Agencies, provided that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the thencurrent ratings assigned by the Applicable Rating Agencies to the Bonds; or (ii) written confirmation from each of the Applicable Rating Agencies, that the assignee has an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned by the Applicable Rating Agencies to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly agree to assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

ARTICLE XIV PAYMENTS

Section 14.1 Monthly Statements.

(a) No later than the fifth (5th) day of each Month during the Delivery Period (excluding the first (1st) Month of the Delivery Period) and the first (1st) Month following the end of the Delivery Period, Purchaser shall deliver to Issuer a statement (a "Purchaser's Statement")

listing any amounts due to Purchaser in connection with this Agreement with respect to the prior Month(s).

- (excluding the first (1st) Month of the Delivery Period) and the first (1st) Month following the end of the Delivery Period (the "<u>Billing Date</u>"), Issuer shall deliver a statement (a "<u>Billing Statement</u>") to Purchaser indicating (i) the total amount due to Issuer for Energy delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Month(s), and (iii) the net amount due to Issuer or Purchaser; provided that invoicing for Monthly Excess Quantities and Assigned Paygo Quantities shall occur under the Participant Custodial Agreement. Additionally, if a Participant Monthly Statement (as defined in the Participant Custodial Agreement) for an Assigned PPA has not been delivered by the tenth (10th) day of the Month following deliveries, Issuer shall provisionally prepare or cause to be prepared a Billing Statement for this Agreement that assumes all of the Monthly Projected Quantities were delivered under the applicable Assigned PPA for such Month, and any subsequent resettlements required with respect thereto shall occur under the Participant Custodial Agreement.
- (c) Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing as such requesting Party may reasonably request.

Section 14.2 Payment.

- (a) If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to the Trustee for the benefit of the Issuer by wire transfer (pursuant to the Trustee's instructions for amounts due under this Agreement, provided that amounts due from Purchaser with respect to Monthly Excess Quantities and Assigned Paygo Quantities, as applicable, shall be paid pursuant to the terms of the Participant Custodial Agreement), in immediately available funds, on or before the twentieth (20th) day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser's instructions), in immediately available funds, on or before the twenty-eighth (28th) day of the Month following the most recent Month to which such Billing Statement relates, or if such day is not a Business Day, the following Business Day.
- (b) If Purchaser fails to issue a Purchaser's Statement with respect to any Month, Issuer shall not be required to estimate any amounts due to Purchaser for such Month, provided that Purchaser may include any such amount on subsequent Purchaser's Statements issued within the next sixty (60) days. The sixty (60) day deadline in this subsection (b) replaces the two (2) year deadline in Section 14.5(b) with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts; Correction of Index Price.

(a) If Purchaser disputes any amounts included in the Issuer's Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of

set-off, counterclaim, recoupment or other defenses to payment that Purchaser may have; *provided*, however, that Purchaser shall have the right, after payment, to dispute any amounts included in a Billing Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5. If Issuer disputes any amounts included in the Purchaser's Statement, Issuer may withhold payment to the extent of the disputed amount; *provided*, however, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

(b) If a value published for any rate or index used or to be used in this Agreement is subsequently corrected and the correction is published or announced by the Person responsible for that publication or announcement within thirty (30) days after the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount shall, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any other applicable provisions of this Agreement, to the other Party that amount, together with interest on that amount at the Default Rate for the period from and including the day on which a payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

Section 14.4 <u>Late Payment</u>. If Purchaser fails to remit the full amount payable within one (1) Business Day of when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

- (a) A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.
- (b) Each Purchaser's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Purchaser's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Energy delivery.
- (c) All retroactive adjustments shall be paid in full by the Party owing payment within thirty (30) days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on an incorrect Billing Statement shall bear interest at the Default Rate from the date such payment was made.

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Section 14.7 <u>Source of Purchaser's Payments</u>. Purchaser covenants and agrees to make payments due hereunder from CCA Revenues, and only from such CCA Revenues, as an operating expense of its CCA System; *provided*, however, that Purchaser may apply any legally available monies to the payment of amounts due hereunder.

Section 14.8 <u>Rate Covenant</u>. Purchaser hereby covenants and agrees that it will establish, fix, prescribe, maintain, and collect rates, fees, and charges from the customers of its CCA System so as to provide CCA Revenues sufficient to enable Purchaser to pay any other amounts legally payable from CCA Revenues, and to maintain any required reserves for Purchaser's CCA System. Purchaser further covenants and agrees that it shall not furnish or supply Energy services free of charge to any Person, except any such service free of charge that Purchaser is supplying on the date hereof as has been specifically identified by Purchaser to Issuer in writing, and it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of Energy to its customers. Notwithstanding anything herein to the contrary, Purchaser shall not be obligated to make any payments hereunder except from CCA Revenues.

Section 14.9 <u>Pledge of CCA Revenues</u>. Purchaser shall not grant any lien on or security interest in, or otherwise pledge or encumber, the CCA Revenues if the terms or effect of such lien, pledge or other encumbrance results in such lien, pledge or other encumbrance having priority over the obligations of Purchaser to pay the Contract Price, which obligations constitute operating expenses of Purchaser.

Section 14.10 Financial Responsibility. In the event the Issuer receives notice from Prepay LLC pursuant to Section 2.12 of the Receivables Purchase Provisions that it requires adequate assurance of performance from the Issuer, Issuer shall provide notice thereof to Purchaser and Purchaser shall (a) notify the Issuer of its agreement to provide such adequate assurance within forty-eight (48) Hours but at least one (1) Business Day of Purchaser's receipt of such notice and (b) provide such adequate assurance to Issuer within seventy-two (72) Hours but at least two (2) Business Days of Purchaser's receipt of such notice. Adequate assurance shall mean sufficient security in the form and for a term reasonably specified by Prepay LLC pursuant to Section 2.12 of the Receivables Purchase Provisions, including but not limited to a standby irrevocable letter of credit, a prepayment, a deposit to an escrow account, or a performance bond or guaranty by a creditworthy entity. In the event Issuer is entitled to demand adequate assurance of performance under this Section 14.10, Issuer may demand at a minimum a prepayment by Purchaser of an amount equal to (i) the amount owed by Purchaser with respect to all Energy delivered by Issuer to Purchaser as of the date of the demand for adequate assurance of performance, plus (ii) the amount, as determined and adjusted from time to time by Issuer (with the input of Prepay LLC pursuant to the Receivables Purchase Provisions (as defined in the Bond Indenture)) in a Commercially Reasonable manner, expected to be owed by Purchaser with respect to the Energy to be delivered by Issuer to Purchaser during the remainder of the thencurrent Month and the following Month. The Parties agree that in the event Purchaser fails to provide such adequate assurance as demanded, Issuer shall have the right to suspend its performance under this Agreement, including the making of deliveries of Energy to Purchaser, immediately upon written notice and shall not be obligated to restore such performance until the later of (A) the first day of the Month after such demand has been satisfied, and (B) the completion of the term of deliveries to any replacement sales customer to which Prepay LLC has remarketed the Energy on behalf of Issuer.

ARTICLE XV [RESERVED]

ARTICLE XVI NOTICES

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to the other Party (or to a third party) shall be in writing and shall either be sent by electronic means, courier, or personally delivered (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) on the date it is delivered by electronic means or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon ten (10) days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Party that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

ARTICLE XVII DEFAULT; REMEDIES; TERMINATION

Section 17.1 <u>Issuer Default</u>. Each of the following events shall constitute an "<u>Issuer Default</u>" under this Agreement:

- (a) any representation or warranty made by Issuer in this Agreement proves to have been incorrect in any material respect when made; or
- (b) Issuer fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following the earlier of (i) receipt by Issuer of notice thereof or (ii) an officer of Issuer obtaining actual knowledge of such default.
- Section 17.2 <u>Purchaser Default</u>. Each of the following events shall constitute a "<u>Purchaser Default</u>" under this Agreement:

- (a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for one (1) Business Day following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default;
- Purchaser (i) is dissolved (other than pursuant to a consolidation, (b) amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its of assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;
- (c) any representation or warranty made by Purchaser in this Agreement proves to have been incorrect in any material respect when made; or
- (d) Purchaser fails to perform, observe or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than fifteen (15) days following the earlier of (i) receipt by Purchaser of notice thereof or (ii) an officer of Purchaser becoming aware of such default.

Section 17.3 Remedies Upon Default.

(a) <u>Termination</u>. If at any time an Issuer Default or a Purchaser Default has occurred and is continuing, then the non-defaulting Party may do any or all of the following (i) by notice to the defaulting Party specifying the relevant Issuer Default or Purchaser Default, as applicable, terminate this Agreement effective as of a day not earlier than the day such notice is deemed given under <u>Article XVI</u> and/or (ii) declare all amounts due to the non-defaulting Party under this Agreement or any part thereof immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of intent to demand, protest or other formalities of any kind, all of which are hereby expressly waived by the defaulting Party; *provided*, however, this Agreement shall automatically terminate and all amounts due to the non-defaulting Party hereunder shall

immediately become due and payable as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition that upon the occurrence of a Purchaser Default specified in Section 17.2(b)(iv) or, to the extent analogous thereto, Section 17.2(b)(viii). In addition, during the existence of an Issuer Default or a Purchaser Default, as applicable, the non-defaulting Party may exercise all other rights and remedies available to it at Law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of this Agreement.

- Additional Remedies. In addition to the remedies set forth in Section 17.3(a) (and without limiting any other provisions of this Agreement), during the existence of any Purchaser Default, Issuer may suspend its performance hereunder and discontinue the supply of all or any portion of the Energy otherwise to be delivered to Purchaser by it under this Agreement. If Issuer exercises its right to suspend performance under this Section 17.3(b), Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Agreement. Deliveries of Energy may only be reinstated, at a time to be determined by Issuer, upon (i) payment in full by Purchaser of all amounts then due and payable under this Agreement and (ii) payment in advance by Purchaser at the beginning of each Month of amounts estimated by Issuer to be due to Issuer for the future delivery of Energy under this Agreement for such Month. Issuer may continue to require payment in advance from Purchaser after the reinstatement of Issuer's supply services under this Agreement for such period of time as Issuer in its sole discretion may determine is appropriate. In addition, and without limiting any other provisions of or remedies available under this Agreement, if Purchaser fails to accept from Issuer any Energy tendered for delivery under this Agreement, Issuer shall have the right to sell such Energy to third parties on any terms that Issuer, in its sole discretion, determines are appropriate.
- (c) <u>Effect of Early Termination</u>. As of the effectiveness of any termination date in accordance with clause (i) of <u>Section 17.3(a)</u>, (i) the Delivery Period shall end, (ii) the obligation of Issuer to make any further deliveries of Energy to Purchaser under this Agreement shall terminate, and (iii) the obligation of Purchaser to receive deliveries of Energy from Issuer under this Agreement will terminate. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this <u>Article XVII</u>. Without prejudice to any payment obligation in respect of periods prior to termination, no payments will be due from either Party in respect of periods occurring after the effective termination date of this Agreement.

Section 17.4 <u>Termination of Prepaid Agreement</u>. Purchaser acknowledges and agrees that (i) in the event an Energy Delivery Termination Event occurs under and as defined in the Prepaid Agreement for any reason prior to the end of the Delivery Period, this Agreement shall terminate on the Energy Delivery Termination Date (which date shall be the last date upon which deliveries are required under the Prepaid Agreement, subject to all winding up arrangements) and (ii) Issuer's obligation to deliver Energy under this Agreement shall terminate upon the termination of deliveries of Energy to Issuer under the Prepaid Agreement. Issuer shall provide notice to Purchaser of any early termination date of the Prepaid Agreement. The Parties recognize and agree that, in the event that the Prepaid Agreement terminates because of a Failed Remarketing (as defined in the Bond Indenture) of the Bonds that occurs in the first Month of a Reset Period, Issuer shall deliver Energy under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, no Monthly Discount or

Annual Refunds shall be associated with such deliveries and the Contract Price shall be adjusted accordingly.

Section 17.5 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN 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. 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 WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE. THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN COMMODITY PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN.

ARTICLE XVIII MISCELLANEOUS

Section 18.1 <u>Indemnification Procedure</u>. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys' fees and experts' fees and to post any appeals bonds; *provided*, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double

recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 <u>Deliveries</u>. Contemporaneously with this Agreement (unless otherwise specified): Each Party shall deliver to the other Party evidence reasonably satisfactory to it of (i) such Party's authority to execute, deliver and perform its obligations under this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement on behalf of such Party;

- (a) as of the date hereof, Purchaser shall deliver to Issuer a fully executed Federal Tax Certificate in the form attached hereto as Exhibit D;
- (b) on the Bond Closing Date, Purchaser shall deliver to Issuer an opinion of counsel to Purchaser in the form attached hereto as Exhibit E;
- (c) on the Bond Closing Date, Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth hereto as <u>Exhibit G</u>.

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW.

Section 18.5 <u>Non-Waiver</u>. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed a waiver of any other subsequent breach.

Section 18.6 <u>Severability</u>. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 <u>Exhibits</u>. Any and all Exhibits referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 <u>Relationships of Parties</u>. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Each Party represents and covenants to and agrees with the other Party that it is not entitled to and shall not assert the defense of sovereign immunity or governmental immunity with respect to its obligations or any Claims under this Agreement, and each hereby waives any such defense of sovereign or governmental immunity to the full extent permitted by Law.

Section 18.11 <u>Rates and Indices</u>. If the source of any publication used to determine the index or other price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, an alternative index or other price will be used based on the determinations made by Issuer and Prepay LLC under Section 18.11 of the Prepaid Agreement. Issuer shall provide Purchaser the opportunity to provide its recommendations and other input to Issuer for Issuer's use in the process for selecting such alternative index or other price under Section 18.11 of the Prepaid Agreement.

Section 18.12 Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Third Party Beneficiaries; Rights of Trustee. Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the amounts payable by Purchaser under this Agreement to secure Issuer's obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Purchaser's obligations under this Agreement, (c) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (d) in the event of any Purchaser Defaults under Section 17.2(a), (i) Prepay LLC may, to the extent provided for in, and in accordance with, the Receivables Purchase Provisions (as defined in the Bond Indenture), take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and shall thereafter have all rights of collection with respect to such receivables, and (ii) if such receivables are not so assigned, the Commodity Swap Counterparty (as defined in the Bond Indenture) shall have the right to pursue collection of such receivables to the extent of any non-payment by Issuer to the Commodity Swap Counterparty that was caused by Purchaser's payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

Section 18.15 <u>Waiver of Defenses</u>. Purchaser waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to Purchaser with regard to Purchaser's obligations pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Power Supply Contract to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Separate Signature Page(s) Attached]

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By:	
Name:	
Title:	
SAN D	IEGO COMMUNITY POWER
By:	
Name:	
Title:	

Signature Page to Power Supply Contract

EXHIBIT A-1 BASE ENERGY HOURLY QUANTITIES

[To be attached.]

EXHIBIT A-2 EPS ENERGY PERIOD MONTHLY PROJECTED QUANTITIES

[To be attached.]

EXHIBIT A-3 ANNUAL QUANTITY

[To be attached.]

EXHIBIT B NOTICES

IF TO ISSUER: California Community Choice Financing Authority

1125 Tamalpais Avenue San Rafael, CA 94901

notices@cccfa.org and invoices@cccfa.org

IF TO PURCHASER: Eric Washington

Chief Financial Officer & Treasurer

815 E Street, Suite 12716 San Diego, CA 92112

Email: ewashington@sdcommunitypower.org

EXHIBIT C FORM OF REMARKETING ELECTION NOTICE

[], 20[_]	
Energy Prepay III, LLC c/o Morgan Stanley & Co. [1585 Broadway	
New York, NY 10036-9203] Email: SDCP_2025[X]_ms_notices@morganstanle	ey.com
With a mandatory copy to: Email: msdoc-misc-notices@morganstanley.com	
U.S. Bank Trust Company, National Association 2 Concourse Parkway, Suite 800 Atlanta, Georgia 30328 Attention: Mark Hallam	
To the Addressees:	
The undersigned, duly authorized re a California joint powers authority (the "Purchasen Election Notice") pursuant to the Power Supply Co Contract"), between California Community Cho Capitalized terms used herein shall have the meaning	ontract, dated as of [], 2025 (the "Supplyice Financing Authority and the Purchaser
Pursuant to Section 3.4(b) of the Supits Contract Quantity for the applicable Resecommencement of such Reset Period. The resum shall be in accordance with Section 3.4(d) of the Supital Section	ption of deliveries in any future Reset Period
Given this [] day of [], 20[].
	SAN DIEGO COMMUNITY POWER
	By:Printed Name: Title:

EXHIBIT D

FORM OF FEDERAL TAX CERTIFICATE

(a), is [] MWh. Accordingly, the amount of Energy to be acquired under the Supply Contract by Purchaser, supplemented by the amount of Energy otherwise available to Purchase as of the Bond Closing Date, during any year does not exceed []% of the expected annual average amount of Energy to be purchased (other than for resale) by customers of Purchaser who are located within the service area of Purchaser.
3. In the event of the expiration or termination of an EPS Energy Period, Purchaser agree to comply with its obligations under the Assignment Letter Agreement, including but not limited to its obligations to (a) exercise Commercially Reasonable Efforts to assign a portion of Purchaser's rights and obligations under a power purchase agreement under which Purchaser is purchasing EPS Compliant Energy to MSCG or Prepay LLC pursuant to an Assignment Agreement and (b) cooperate in good faith with Issuer, MSCG and Prepay LLC with respect to any proposed assignments.
4. Purchaser expects to pay for Energy acquired pursuant to the Supply Contract solely from funds derived from its operations as a community choice aggregator. Purchaser expects to use current CCA Revenues of its CCA System to pay for current Energy acquisitions. Neither the Purchaser nor any person who is a related party to the Purchaser will hold any funds or account in which monies are set aside and invested and which are reasonably expected to be used to pay for Energy more than one year after such monies are set aside. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Purchaser or any persons who are related Persons to Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.
, 2025
By:

[Name] [Title]

EXHIBIT E FORMS OF OPINION OF COUNSEL TO PURCHASER

[INSERT SDCP LETTERHEAD]

	[], [_], 2025
California Community Choice I San Rafael, California	Financing .	Authority	
Morgan Stanley & Co. LLC New York, NY			

Re: California Community Choice Financing Authority Clean Energy Project Revenue

Bonds, 2025 Series [X]

Ladies and Gentlemen:

I am general counsel to San Diego Community Power, a California joint powers authority ("SDCP"). This opinion is being provided in connection with the issuance by the California Community Choice Financing Authority (the "Issuer") of its Clean Energy Project Revenue Bonds, 2025 Series [X]. This opinion is rendered in connection with the Bond Purchase Contract, dated [____], 2025 (the "Bond Purchase Contract"), by and between Morgan Stanley & Co. LLC, as underwriter, and the Issuer. Capitalized terms used herein shall have the meanings given to them in the Bond Purchase Contract.

In rendering this opinion, I have examined or reviewed copies of such records and other documents as I have deemed necessary and relevant for purposes of this opinion. In my examination, I have assumed the genuineness of all signatures, the authenticity of all documents submitted to me as originals, and the conformity of all original documents submitted to me as copies. In basing the opinion set forth in this letter on "my knowledge", the words "my knowledge" signify that no facts have come to my attention that would give me actual knowledge or actual notice that such opinion is not accurate. Except as otherwise stated in this opinion, I have undertaken no investigation or verification of such matters.

The opinion or conclusions herein may be affected by actions taken or omitted or events occurring after the date hereof. I have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to my attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. In reviewing the documents and matters referred to above, I have assumed the due and legal execution and delivery thereof by, and the validity against, any parties other than SDCP. I have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in such documents. I have further assumed compliance with all covenants and agreements contained in such documents.

Based upon and subject to the foregoing and in reliance thereon, as of the date hereof, to my knowledge, after due inquiry, there is no legislation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to my knowledge, threatened against SDCP, affecting the existence of SDCP or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the execution and delivery of the Power Supply Contract, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or contesting the powers of SDCP or any authority for the execution and delivery of the Power Supply Contract, nor, to my knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Power Supply Contract.

I express no opinion as to any matter other than as expressly set forth above, and I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America. I disclaim any obligation to update this letter.

	Very truly yours,
[]	
General Counsel	

Γ	1, 2025
L	1,

To the Addressees on Schedule I attached hereto

We have acted as counsel to San Diego Community Power, a California joint powers authority (the "Project Participant") in connection with the issuance by the California Community Choice Financing Authority (the "Issuer") of its Clean Energy Project Revenue Bonds, 2025 Series [X] (the "Bonds"). This opinion is rendered pursuant to the Bond Purchase Contract, dated [____], 2025 (the "Bond Purchase Contract"), by and between Morgan Stanley & Co. LLC, as underwriter (the "Underwriter") and the Issuer.

In rendering this opinion, we have examined executed copies of the following documents in the form approved by the Board of Directors of the Project Participant pursuant to Project Participant Resolution (collectively, the "Project Participant Documents"):

- (a) Resolution No. 2025-[__] adopted by the Board of Directors of the Project Participant on [], 2025 (the "Project Participant Resolution");
 - (b) Power Supply Contract between the Project Participant and the Issuer;
- (c) Custodial Agreement by and among the Project Participant, Energy Prepay III, LLC (the "Energy Supplier"), Morgan Stanley Capital Group Inc. ("MSCG") and U.S. Bank Trust Company, National Association, as custodian;
- (d) Limited Assignment Agreement by and among the Project Participant, the Energy Supplier and MSCG, as seller under the power purchase agreement to which such assignment relates;
- (e) Letter Agreement by and among the Project Participant, the Issuer, the Energy Supplier and MSCG regarding matters relating to Limited Assignment Agreements; and
- (f) Project Administration Agreement relating to the Clean Energy Project, by and between the Project Participant and the Issuer;

We have also reviewed copies of such records and other documents as we have deemed necessary and relevant for purposes of this opinion. In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity of all original documents submitted to us as copies.

As to factual matters, we have relied solely upon our review of the foregoing, the representations and warranties of the Project Participant contained in the Project Participant Documents, the Preliminary Official Statement, the Official Statement, the joint powers agreement of the Project Participant, and various certificates and other documents furnished to us by authorized officers of the Project Participant. In basing the opinions set forth in this letter on "our knowledge", the words "our knowledge" signify that, in the course of our representation, no facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we have undertaken no investigation or verification of such matters.

We are of the opinion that:

- 1. The Project Participant is a joint powers authority created and existing under the laws of the State of California (the "State"), specifically the Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented from time to time (the "Act"), and has full legal right, power and authority under the Act to (a) enter into, execute and deliver the Project Participant Documents, and (b) carry out and consummate the transactions contemplated by the Project Participant Documents.
- 2. By all necessary official action, the Project Participant has duly authorized all necessary action to be taken by it for (a) the adoption of the Project Participant Resolution, (b) the approval, execution and delivery of, and the performance by the Project Participant of the obligations on its part, contained in the Project Participant Documents, and (c) the consummation by it of all other transactions contemplated by the Preliminary Official Statement, the Official Statement and the Project Participant Documents.
- 3. The Project Participant Resolution was duly and validly adopted by the Project Participant in compliance with all applicable procedural requirements of the Project Participant and in compliance with the Act, and the Project Participant Resolution is in full force and effect and has not been amended.
- 4. The Project Participant Documents have been duly authorized, executed and delivered by the Project Participant, and constitute legal, valid and binding obligations of the Project Participant enforceable against the Project Participant in accordance with their respective terms, except to the extent limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application relating to or affecting the enforcement of creditors' rights.
- 5. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Project Participant of its obligations under the Project Participant Documents have been obtained.
- 6. The execution and delivery of the Project Participant Documents and compliance by the Project Participant with the provisions thereof, under the circumstances contemplated therein, will not conflict with or constitute on the part of the Project Participant a material breach of or a default under any agreement or instrument to which the Project Participant is a party, or violate any existing law, administrative regulation, court order, or consent decree to which the Project Participant is subject.
- 7. To our knowledge, the statements contained in the Preliminary Official Statement as of its date and in the Official statement under the captions ["INTRODUCTION THE PROJECT PARTICIPANT," "COMMUNITY CHOICE AGGREGATORS," in the second paragraph under the caption "LITIGATION," and in Appendix A "THE PROJECT PARTICIPANT San Diego Community Power"] are true and correct in all material respects.

Notwithstanding anything to the contrary contained above, the foregoing opinion is expressly made subject to the following exceptions, qualifications, and assumptions:

(i) We express no opinion with respect to the validity or enforceability of any provisions of the Project Participant Documents or any other documents that may be read to require the Project Participant to indemnify any party.

- (ii) We express no opinion with respect to regulatory compliance by the Project Participant under any applicable law, including the California Public Utilities Code, as amended or supplemented from time to time, as determined by any governmental authority, including the California Public Utilities Commission, regarding the purchase of Energy by the Project Participant under the Power Supply Contract.
- (iii) We express no opinion as to the enforceability of provisions waiving, directly or indirectly, expressly or impliedly, defenses to obligations or rights granted by law, where such waivers are prohibited by law or are against public policy.
- (iv) Our opinion as to enforceability is limited by standards of good faith, fair dealing, materiality, and reasonableness that may be applied by a court to the exercise of certain rights and remedies; limitations based on statutes or on public policy limiting a person's right to waive the benefit of statutory provisions or of a common law right; and limitations releasing a party from or indemnifying a party against liability for its own wrongful or negligent act when such release or indemnification is contrary to public policy.
- (v) Our opinion is limited to the matters stated herein and no opinion may be inferred or implied beyond the matters expressly stated herein. The opinions expressed in this letter are given solely for your use and benefit in connection with the transactions referred to herein and no other person may use or rely on this opinion letter, nor may it be used or relied upon in any other transaction which is not related to transactions referred to herein, without our prior express written consent. This opinion is provided to you as a legal opinion only and not as a warranty or guarantee with respect to the matter described herein or in the documents referred to herein.
- (vi) The scope of this opinion is limited to those issues and parties specifically considered herein and no further or more expansive opinion is implied or should be inferred from any opinion expressed herein. On such basis, any variation or difference in the facts upon which this opinion is based might affect our conclusions in an adverse manner and make them inaccurate.

This opinion is rendered solely for the use and benefit of the parties listed on Schedule I hereto and may not be relied upon other than in connection with the transactions contemplated by the Project Participant Documents, or by any other person or entity for any purpose whatsoever, nor may this opinion be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity, without the prior written consent of the undersigned.

Respectfully submitted,

EXHIBIT F

MONTHLY DISCOUNT

Monthly Discount:	From [] through and including []: \$[] per MWh
	and from [] until the end of the Initial Reset Period:
	\$[]/MWh.

EXHIBIT G FORM OF CLOSING CERTIFICATE

CLOSING CERTIFICATE OF PURCHASER

	_	, 2025
Re:		unity Choice Financing Authority gy Project Revenue Bonds
The unde	ersigned	of San Diego Community Power, a
California joint p	powers authority (the "Pi	urchaser"), hereby certifies as follows in connection with
the Power Suppl	y Contract dated as of [], 2025 (the "Agreement") between the Purchaser and
California Comr	nunity Choice Financing	Authority ("Issuer") and the issuance and sale by Issuer
of the above-refe	erenced bonds (the "Bon	ds") (capitalized terms used and not defined herein shall
have the meanin	gs given to them in the A	Agreement):

- 1. Purchaser is a community choice aggregator, duly created and validly existing as a joint powers authority, and is in good standing, under the laws of the State of California (the "State"), and has the corporate power and authority to enter into and perform its obligations under the Agreement.
- 2. By all necessary official action on its part, the Purchaser has duly authorized and approved the execution and delivery of, and the performance by the Purchaser of the obligations on its part contained in the Agreement, and such authorization and approval has not been amended, supplemented, rescinded or modified in any respect since the date thereof.
 - 3. The Agreement constitutes the legal, valid and binding obligation of the Purchaser.
- 4. The authorization, execution and delivery of the Agreement and compliance with the provisions on the Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default under (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.
- 5 The Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or to which the Purchaser or any of its property or

assets are subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Purchaser under any of the foregoing.

- 6. Payments to be made by the Purchaser under the Agreement shall constitute operating expenses of the Purchaser's CCA System (as defined in the Agreement) payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of the Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance or other restriction.
- 7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against the Purchaser in any court or administrative body which would (a) contest the right of the officials of the Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Purchaser, (c) contest the validity, due authorization and execution of the Agreement or (d) attempt to limit, enjoin or otherwise restrict or prevent the Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of the Purchaser is there any basis therefor.
- 8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Purchaser of its obligations under the Agreement have been duly obtained.
- 9. The representations and warranties of the Purchaser contained in the Agreement were true, complete and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.
- 10. The statements and information with respect to the Purchaser contained in the Official Statement dated _______, 2025 with respect to the Bonds, including Appendix B thereto (the "Official Statement"), fairly and accurately describe and summarize the financial and operating position of the Purchaser for the periods shown therein, and such statements and information did not as of the date of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.
- 11. No event affecting the Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information with respect to the Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS	WHEREOF	the undersigned	has execut	ed this	Certificate	on and	as of	the
date first written above	.	_						

SAN DIEGO COMMUNITY POWER

By			
Name:			
Title:			

EXHIBIT H

FORM OF REMEDIATION CERTIFICATE

[], 20
Energy Prepay III, LLC c/o Morgan Stanley & Co. [1585 Broadway New York, NY 10036-9203] Email: SDCP_2025[X]_ms_notices@morganstanley.com With a mandatory copy to: Email: msdoc-misc-notices@morganstanley.com
Re: Power Supply Contract with California Community Choice Financing Authority: Section 7.5 Remediation
To the addressees:
The undersigned, duly authorized representative of San Diego Community Power, a California joint powers authority (" <u>Purchaser</u> "), hereby certifies as follows in connection with the Power Supply Contract, dated as of [], 2025 (the "Contract"), between Purchaser and California Community Choice Financing Authority and remediation of Disqualified Remarketing Proceeds pursuant to Section 7.5 of the Contract. Capitalized terms used herein shall have the meanings set forth in the Contract.
Set forth as Attachment 1 hereto is a copy of Purchaser's invoice for the Month of [] for purchases of Energy from [] [NOTE: Insert reference to supplier.] pursuant that certain [] [NOTE: Insert reference to applicable supply agreement.], and all of such Energy was used in compliance with the Qualifying Use Requirements.
In witness whereof the undersigned has executed this Certificate on and as of the
date first written above. SAN DIEGO COMMUNITY POWER
By [Name] [Title]

EXHIBIT A2

MASTER CUSTODIAL AGREEMENT

This Master Custodial Agreement (this " <u>Agreement</u> ") is made and entered into as of [], 2025, by and among Energy Prepay III, LLC, a Delaware limited liability company (" <u>Prepay LLC</u> "), Morgan Stanley Capital Group Inc., a Delaware corporation (" <u>MSCG</u> "), California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 <i>et seq</i> . of the <i>California Government Code</i> , as amended) (" <u>Issuer</u> "), and The Bank of New York Mellon, a New York banking corporation, in its capacity as custodian hereunder (in such capacity, the " <u>Master Custodian</u> ").
RECITALS:
WHEREAS, Issuer is issuing its [Clean Energy Project Revenue Bonds, 2025 Series [X]] (the "Bonds") pursuant to the Trust Indenture, dated as of [], 2025 (the "Bond Indenture") between the Issuer and U.S. Bank Trust Company, National Association, in its capacity as trustee under the Bond Indenture (the "Trustee"); and
WHEREAS, Prepay LLC and Issuer are entering into a Prepaid Energy Sales Agreement, dated as of [], 2025 (the "Prepaid Agreement"); and
WHEREAS, in connection with the execution of the Prepaid Agreement, Prepay LLC and MSCG are entering into an Energy Management Agreement, dated as of the date hereof (the "Energy Management Agreement"); and
WHEREAS, in connection with the execution of the Prepaid Agreement, [], a [] (along with its successors and permitted assignees, "Funding Recipient") are entering into a [], dated as of [], (as may be amended, supplemented, or otherwise replaced), (the "Funding Agreement") pursuant to which Funding Recipient is the borrower and Prepay LLC is the lender; and
WHEREAS, Royal Bank of Canada (the "Swap Counterparty"), and Prepay LLC are entering into a commodity price swap transaction pursuant to an ISDA Master Agreement, dated as of [], 2025, together with the Schedule, Credit Support Annex(s) and a Confirmation, dated as of [], 2025 (such ISDA Master Agreement, Schedule, Credit Support Annex(s), Confirmation and any other confirmation entered into consistent with the terms thereof, the "Back-End Commodity Swap"); and
WHEREAS, in connection with the execution of the Back-End Commodity Swap, Prepay LLC and the Trustee are entering into a Custodial Agreement with Swap Counterparty, dated as of [], 2025 (the "Seller Swap Custodial Agreement"), pursuant to which the parties will establish a custodial account for payment of amounts due by Prepay LLC to the Swap Counterparty under the Back-End Commodity Swap (the "Swap Payments Account"); and
WHEREAS, to enable Prepay LLC to perform certain of its obligations in connection with the Clean Energy Project, (i) Prepay LLC and MSCG are entering into a Subordinated Note Purchase Agreement, dated as of [], 2025 and may enter into additional subordinated note

purchase agreements in connection with the establishment of future Interest Rate Periods (the "<u>Subordinated Note Purchase Agreement</u>"), pursuant to which MSCG is the investor and Prepay LLC is the issuer of a Subordinated Note (the "<u>Subordinated Note</u>") and (ii) Prepay LLC and Morgan Stanley Capital Services LLC ("<u>MSCS</u>") are entering into a credit default swap transaction pursuant to that certain Confirmation, dated as of [____], 2025 (the "<u>Credit Default Swap</u>"); and

WHEREAS, Prepay LLC, MSCG, the Issuer and the Master Custodian propose to enter into this Agreement in order to administer payments to be (a) received by Prepay LLC under (i) the Funding Agreement, (ii) the Energy Management Agreement, (iii) the Prepaid Agreement, (iv) the Back-End Commodity Swap consistent with the terms of the Seller Swap Custodial Agreement, (v) the Subordinated Note Purchase Agreement and (vi) the Credit Default Swap, and (b) paid by Prepay LLC (i) under the Prepaid Agreement, (ii) under the Energy Management Agreement, (iii) under the Back-End Commodity Swap consistent with the terms of the Seller Swap Custodial Agreement, (iv) under the Credit Default Swap, (v) as a distribution to MSCG in its capacity as the sole member of Prepay LLC and (vi) on the Subordinated Note.

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

- Section 1. <u>Defined Terms; Interpretation</u>. Any capitalized term used herein and not otherwise defined herein (including in the recitals) shall have the meaning assigned to such term in the Bond Indenture. Any reference herein to any agreement or document includes all amendments, supplements or restatements to and of such agreement or document as may occur from time to time, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms thereof.
- Section 2. <u>Appointment of Master Custodian</u>. Prepay LLC, MSCG and the Issuer hereby appoint The Bank of New York Mellon as the Master Custodian under this Agreement, with such rights and obligations as are specifically set forth herein. The Master Custodian hereby accepts such appointment under the terms and conditions set forth herein.

Section 3. <u>Payment Instructions to Custodian.</u>

(a) No later than the 9th day of each Month, Prepay LLC shall deliver written payment instructions to the Master Custodian detailing the amounts owed to and to be paid by Prepay LLC under the Back-End Commodity Swap, the Prepaid Agreement and the Energy Management Agreement for such Month and the Master Custodian shall make any payments owed by Prepay LLC by wire transfer to the account specified in Exhibit A hereto; provided that, if Prepay LLC fails to deliver such instructions, the Master Custodian may request and rely upon instructions from Issuer. The parties hereto acknowledge and agree that such instructions may be provided by MSCG as Prepay LLC's agent in the form of a consolidated statement, setting forth (i) the Buyer's Statement (as defined in the Prepaid Agreement) delivered by Issuer under the Prepaid Agreement, (ii) the Buyer's Statement (as defined in the Energy Management Agreement), (ii) the Billing Statement (as defined in the Energy Management Agreement) delivered by MSCG under the Energy Management Agreement, (v) Prepay LLC's settlement delivered by MSCG under the Energy Management, (v) Prepay LLC's settlement

calculations under the Back-End Commodity Swap, (vi) Prepay LLC's principal and interest payment obligations under the Subordinated Note, (vii) Prepay LLC's principal and interest payment obligations under the Credit Default Swap, (viii) Prepay LLC's payment obligations, if any, under any Assignment Agreement (as defined in the Energy Management Agreement) pursuant to which MSCG is the PPA Supplier (as defined in the Energy Management Agreement) and (ix) the amounts, if any, to be paid as distributions to MSCG in its capacity as the sole member of Prepay LLC; provided that, for the avoidance of doubt, Issuer shall still have the obligation to deliver its Buyer's Statement under the Prepaid Agreement and MSCG as Prepay LLC's agent then will reflect such amounts in a consolidated statement delivered hereunder. Additionally, in the event that an Early Termination Payment Date has occurred under the Prepaid Agreement, Prepay LLC shall promptly notify the Master Custodian thereof by delivering a notice substantially in the form of Exhibit B attached hereto, and Prepay LLC's payment instructions delivered in the Month of the Early Termination Payment Date shall specify (A) the amounts to be paid under Section 4(c), which will reflect ordinary course settlements due for the preceding Month and may be based upon reasonable estimates of the amounts due for such Month if any such amounts are unknown, and (B) the amounts due on the Early Termination Payment Date under Section 4(e), which will reflect the amounts due in relation to the occurrence of the Early Termination Payment Date.

(b) Prepay LLC on a daily basis shall provide written instructions to the Master Custodian regarding payments to the Swap Counterparty pursuant to the collateral posting obligations of Prepay LLC under the Credit Support Annex to the Back-End Commodity Swap; provided that, if Prepay LLC fails to provide such instructions, the Master Custodian is authorized to receive and rely upon written instructions provided by the Swap Counterparty.

Section 4. <u>Prepay LLC Revenue Account.</u>

(a) With respect to payments required to be made to Prepay LLC under the Funding Agreement, the Energy Management Agreement, the Prepaid Agreement and the Back-End Commodity Swap, there is hereby established with the Master Custodian at its offices located at 240 Greenwich Street, New York, NY 10286, a payments account designated as the "ENERGY PREPAY III LLC REVENUE ACCOUNT", bearing Master Custodian's Account No. [____] (the "Prepay LLC Revenue Account"); and (A) any and all payments payable by the Funding Recipient to Prepay LLC pursuant to the Funding Agreement, (B) any and all payments payable by MSCG to Prepay LLC pursuant to the Energy Management Agreement, (C) any and all net payments payable by Issuer to Prepay LLC pursuant to the Prepaid Agreement, and (D) any and all net payments payable by the Swap Counterparty to Prepay LLC pursuant to the Back-End Commodity Swap shall be paid by wire transfer to and deposited in the Prepay LLC Revenue Account.

THE BANK OF	NEW YORK MELLON
ABA# 02100001	18
A/C #: []	
Name: PREPA	Y III LLC REVENUE ACCOUNT

(b) Amounts deposited in the Prepay LLC Revenue Account shall be held in trust for the benefit of Prepay LLC until applied as set forth in Section 4(c) and Section 4(d) below. Without limiting the proviso contained in Section 3(b) hereof or the provisions of Section 15

hereof, the Master Custodian shall not be required to comply with any orders, demands, or other instructions from Issuer (or the Trustee on behalf of Issuer), MSCG or the Swap Counterparty with respect to the Prepay LLC Revenue Account, including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Prepay LLC Revenue Account and each of the parties hereto agree that prior to the termination of this Agreement in accordance with the terms hereof, they shall have no right to direct the disposition of funds or other assets held in or credited to the Prepay LLC Revenue Account, or to withdraw or otherwise obtain funds or other assets held in or credited to the Prepay LLC Revenue Account, whether by order or instruction to the Master Custodian or otherwise, except to the extent that amounts on deposit in the Prepay LLC Revenue Account are payable (i) to the Swap Payments Account in accordance with the terms hereof, the Back-End Custodial Agreement and the Back-End Commodity Swap, (ii) to Issuer in accordance with the terms hereof and of the Prepaid Agreement and (iii) to MSCG in accordance with the terms hereof and of the Energy Management Agreement.

- (c) Subject to <u>Section 4(d)</u> and <u>Section 4(e)</u> below, the Master Custodian shall withdraw amounts on deposit in the Prepay LLC Revenue Account on behalf of Prepay LLC to be applied as follows:
 - (i) <u>First</u>: To the extent amounts are then-available in the Prepay LLC Revenue Account, to the Swap Payments Account on the 23rd of each Month, but if such day is not a Business Day (as defined in the Back-End Commodity Swap), the immediately preceding Business Day, in satisfaction of any net amounts or any unpaid portion thereof owed by Prepay LLC to the Swap Counterparty under the Back-End Commodity Swap as set forth in the instructions delivered under <u>Section 3(a)</u>.
 - (ii) <u>Second</u>: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account, to the Issuer on the 24th of each Month, in satisfaction of any amounts owed by Prepay LLC to Issuer under the Prepaid Agreement (other than amounts owed by Prepay LLC to Issuer under Section 17.3 of the Prepaid Agreement (Payments Following a Ledger Event), which shall be paid in accordance with <u>Section 4(d)</u>) as set forth in the instructions delivered under <u>Section 3(a)</u>.
 - (iii) <u>Third</u>: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account, to MSCG on or after the 25th of each Month, in satisfaction of (A) any amounts owed by Prepay LLC to MSCG under the Energy Management Agreement as set forth in the instructions delivered under <u>Section 3(a)</u> and (B) any amounts owed by Prepay LLC to MSCG under an Assignment Agreement (as defined in the Energy Management Agreement) pursuant to which MSCG is the PPA Supplier (as defined in the Energy Management Agreement).
 - (iv) <u>Fourth</u>: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account following the application of funds pursuant to the foregoing clauses (i) (iii) in any Month, to the Prepay LLC Capital Account.
 - (d) Notwithstanding Section 4(c), the parties acknowledge and agree that:

- (i) the Prepayment (as defined in the Prepaid Agreement) shall be paid by Issuer to Prepay LLC pursuant to the Prepaid Agreement on the Initial Issue Date and such amount shall be (A) paid by wire transfer to the Prepaid LLC Revenue Account and (B) transferred promptly by the Master Custodian to the Funding Recipient on behalf of Prepay LLC pursuant to Prepay LLC's written instructions (which may include standing instructions) in accordance with the Funding Agreement;
- (ii) any payment by MSCG to Prepay LLC with respect to a Ledger Event pursuant to [Section 17.6(b)] of the Energy Management Agreement shall be (A) paid by wire transfer to the Prepaid LLC Revenue Account and (B) transferred promptly by the Master Custodian pursuant to Prepay LLC's written instructions (which may include standing instructions) to an account specified by the Trustee in satisfaction of Prepay LLC's corresponding obligation to the Issuer under Section 17.3 of the Prepaid Agreement.
- (e) Following receipt of notice from Prepay LLC in accordance with <u>Section 3(a)</u> that an Early Termination Payment Date has occurred, then, on the Early Termination Payment Date and thereafter, the Master Custodian shall withdraw amounts on deposit in the Prepay LLC Revenue Account on behalf of Prepay LLC to be applied as follows:
 - (i) <u>First</u>: To the extent amounts are then-available in the Prepay LLC Revenue Account, to the Swap Payments Account in satisfaction of the Termination Fee (as defined in the Back-End Commodity Swap), if any, and any net amounts or any unpaid portion thereof owed by Prepay LLC to the Swap Counterparty under the Back-End Commodity Swap as set forth in the instructions delivered under <u>Section 3(a)</u>.
 - (ii) <u>Second</u>: If MSCS has paid all amounts due under the Credit Default Swap on or before the Early Termination Payment Date, then, to the extent of any remaining funds then-available in the Prepay LLC Revenue Account, to MSCG in satisfaction of any amounts owed by Prepay LLC to MSCG under the Energy Management Agreement as set forth in the instructions delivered under <u>Section 3(a)</u>.
 - Third: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account, any indemnity or potential indemnity obligations owed by Prepay LLC to either the Independent Director or the Director appointed by the Issuer (such Directors, the "Covered Directors") to (A) the LLC Agreement or (B) any director services agreement entered into with an Independent Director (as defined in the LLC Agreement); provided that any Prepay LLC's obligations with respect thereto shall not in any case exceed \$500,000 per Covered Director; provided furthermore that, to the extent that (I) any potential indemnity claim by a Covered Director remains unresolved as of the Early Termination Payment Date and (II) a Covered Director has notified the Master Custodian of such a potential indemnity claim prior to the Early Termination Payment Date, then the Master Custodian shall set aside \$500,000.00 for each Covered Director with a potential indemnity claim to be held in the Revenue Account until resolution of such potential indemnity claim and applied pursuant to this Section 4(d) once resolved. Capitalized terms used in this clause (iii) and not otherwise defined herein shall have the meaning specified in the that certain Amended and Restated Limited Liability Company Agreement of Prepay LLC, dated as of [], 2025 (the "LLC Agreement").

- (iv) Fourth: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account, to the Issuer (A) first, in satisfaction of any amounts owed by Prepay LLC to Issuer under the Prepaid Agreement on account of any Receivables (as defined in the Prepaid Agreement) and (B) thereafter, in satisfaction of any other amounts owed by Prepay LLC to Issuer under the Prepaid Agreement as set forth in the instructions delivered under Section 3(a).
- (v) <u>Fifth</u>: If MSCS has not paid all amounts due under the Credit Default Swap on or before the Early Termination Payment Date, then, to the extent of any remaining funds then-available in the Prepay LLC Revenue Account, to MSCG in satisfaction of any amounts owed by Prepay LLC to MSCG under the Energy Management Agreement as set forth in the instructions delivered under <u>Section 3(a)</u>.
- (vi) <u>Sixth</u>: To the extent of any remaining funds then-available in the Prepay LLC Revenue Account following the application of funds pursuant to the foregoing clauses (i) (v), to the Prepay LLC Capital Account.

Section 5. <u>Prepay LLC Capital Account.</u>

(a) With respect to (i) any capital contributions to Prepay LLC pursuant to the LLC Agreement, which capital contributions may be in the form of cash or other Cash Equivalents, and certain other amounts that may be paid to Prepay LLC, (ii) any payment by MSCG to Prepay LLC pursuant to the Subordinated Note Purchase Agreement and (iii) any payment by MSCS to Prepay LLC pursuant to the Credit Default Swap, there is hereby established with the Master Custodian at its office located at 240 Greenwich Street, New York, NY 10286, a deposit account designated as the "ENERGY PREPAY III LLC CAPITAL ACCOUNT", bearing Master Custodian's Account No. [] (the "Prepay LLC Capital Account").

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Name: PREPAY III LLC CAPITAL ACCOUNT

- (b) Amounts deposited in the Prepay LLC Capital Account shall be held in trust for the benefit of Prepay LLC until (i) applied as set forth below or (ii) withdrawn by Prepay LLC at Prepay LLC's written request to the extent permitted under Section 5(f); provided, however, that the Master Custodian shall have a lien, security interest and right of set-off against the Prepay LLC Capital Account. The Master Custodian shall not be required to comply with any orders, demands, or other instructions from any Person other than Prepay LLC (or MSCG as Prepay LLC's agent), including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Prepay LLC Capital Account.
- (c) Pursuant to the written instructions received under <u>Section 3(b)</u> regarding Prepay LLC's collateral posting obligations, the Master Custodian shall withdraw the required amounts from the Prepay LLC Capital Account and pay them by wire transfer to the account designated by the Swap Counterparty pursuant to the Back-End Commodity Swap.

- (d) To the extent funds on deposit in the Prepay LLC Revenue Account are insufficient for Prepay LLC to make the payments specified in Section 4(c) for any given Month or Section 4(e) in connection with the occurrence of an Early Termination Payment Date, the Master Custodian shall promptly provide notice of the deficiency via e-mail to the Trustee, the Swap Counterparty and each of the parties hereto and Prepay LLC hereby directs the Master Custodian to withdraw the required amounts from the Prepay LLC Capital Account and deposit such amounts in the Prepay LLC Revenue Account.
- (e) At Prepay LLC's written direction, the Master Custodian shall withdraw amounts on deposit in the Prepay LLC Capital Account on behalf of Prepay LLC for the payment of any fees or other amounts due to (i) the Master Custodian under this Agreement and (ii) the Independent Director (as defined in the LLC Agreement).
- To the extent that the amounts on deposit in the Prepay LLC Capital Account (including any amounts posted by Prepay LLC as collateral under the Back-End Commodity Swap pursuant to Section 5(c)) at any time exceed the greater of (i) the amount specified in Exhibit C of this Agreement as the "Capital Account Minimum Amount" for the then-current calendar month or (ii) \$\[\] (the greater of the amounts specified in clauses (i) and (ii), (the "Minimum Deposit Amount") after the payments specified in Section 4(c) each Month and Section 4(e) if an Early Termination Payment Date occurs, Prepay LLC directs the Master Custodian to withdraw amounts on deposit in the Prepay LLC Capital Account to be applied first to the payment of amounts due under the Credit Default Swap, second as a distribution to MSCG in its capacity as the sole member of Prepay LLC and third to the payment of amounts due, if any, under the Subordinated Note for any given Month (as such amounts are specified in the written payment instructions delivered by MSCG pursuant to Section 3(a)), which may be updated by Prepay LLC from time to time. for any given Month; provided that the Master Custodian shall not transfer any amount from the Prepay LLC Capital Account pursuant to the foregoing clauses (A) and (B) to the extent the remaining balance in the Prepay LLC Capital Account following such transfer will be less than the Minimum Deposit Amount.
- (g) Additionally, subject to the prior satisfaction in full of any amounts payable under Section 4(c) or Section 4(e), as applicable, Prepay LLC hereby directs the Master Custodian to apply any available amounts in the Prepay LLC Capital Account to repayment of the outstanding balance under the Subordinated Note (as such amount is specified in the written payment instructions delivered by MSCG pursuant to Section 3(a) to MSCG on the earlier of (1) the first Business Day of the Month following an Early Termination Payment Date and (2) the Maturity Date (as defined in the Subordinated Note) to the extent amounts are then-available in the Prepay LLC Capital Account.
- (h) Amounts deposited in the Prepay LLC Capital Account in the form of cash or other Cash Equivalents shall, at Prepay LLC's written request and direction, be invested by the Master Custodian in Cash Equivalents as specifically directed (which may include standing instructions), subject to any investment cut-offs of any Cash Equivalent investments directed by Prepay LLC. The Master Custodian shall have no duty to determine whether any investment or reinvestment of monies in the Prepay LLC Capital Account satisfies the criteria set out in the definition of "Cash Equivalents". The Master Custodian shall not be liable for any loss resulting from any investment in any Cash Equivalents or the sale, disposition, redemption or liquidation of such investment or

by reason of the fact that the proceeds realized in respect of such sale, disposition, redemption or liquidation were less than that which might otherwise have been obtained.

(i) In the event that any invested amounts held by the Master Custodian are required to be liquidated in order to make any transfer, disbursement or withdrawal in accordance with this Agreement, the Master Custodian shall cause such investments to be sold or otherwise liquidated into cash (without regard to maturity) as and to the extent necessary in order to make such transfers, disbursements or withdrawals required pursuant to this Agreement. The Master Custodian shall comply with any written instruction from Prepay LLC with respect to the liquidation of such Cash Equivalents. In the event any such investments are redeemed prior to the maturity thereof, the Master Custodian shall not be liable for any loss or penalties relating thereto.

As used herein, "Cash Equivalents" means, at any time:

- (i) any direct obligation of (or unconditionally guaranteed by) the United States (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States) maturing not more than two years from the date of acquisition thereof;
- (ii) any certificate of deposit, time deposit, or bankers acceptance, maturing not more than one year after its date of acquisition, or any demand deposit account which, in any case, is issued by or established at any bank or trust company organized under the laws of the United States (or any state thereof) and any country that is a member of the Organization for Economic Cooperation and Development or any political subdivision thereof, and which: (A) has: (I) a long term debt credit rating of A2 or higher from Moody's or A or higher from S&P (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service); or (II) a combined capital and surplus greater than \$250,000,000; or (C) is the Master Custodian;
- (iii) money market funds that: (A) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940; (B) are rated A or higher by S&P and A2 or higher by Moody's; or (C) a combined capital and surplus of at least \$500,000,000;
- (iv) demand deposits, including interest bearing money market accounts, time deposits, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions rated in the AA/Aa2 long-term ratings category or higher by S&P or Moody's or which are fully FDIC-insured; or
 - (v) cash.

Section 6. Master Custodian.

(a) The Master Custodian shall have (a) no liability under any agreement other than this Agreement and (b) no duty to inquire as to the provisions of any agreement other than this Agreement, the Funding Agreement, the Prepaid Agreement, the Energy Management Agreement, the Subordinated Note Purchase Agreement, Subordinated Note, the Credit Default Swap and the

Back-End Commodity Swap; provided however, that the Master Custodian shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement. The Master Custodian may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Master Custodian shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Master Custodian shall have no duty to solicit any payments which may be due it. The Master Custodian shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Master Custodian's gross negligence or willful misconduct was the primary cause of any loss to any party hereto. In connection with the execution of any of its powers or the performance of any of its duties hereunder, the Master Custodian may consult with counsel, accountants and other skilled persons selected and retained by it. The Master Custodian shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, provided the Master Custodian exercised due care and good faith in the selection of such person. The permissive rights of the Master Custodian to take actions enumerated under this Agreement shall not be construed as duties. Notwithstanding anything to the contrary in this Agreement, the Funding Agreement, the Prepaid Agreement, the Energy Management Agreement, the Subordinated Note Purchase Agreement, the Subordinated Note, the Credit Default Swap and the Back-End Commodity Swap, the Master Custodian shall not be required to exercise any rights or remedies under this Agreement or otherwise take any action or refrain from taking any action, unless it shall have been directed to do so in a writing by Prepay LLC, the Issuer or the Trustee which is authorized or permitted to be given under this Agreement. So long as the Master Custodian has requested instructions from one or more of Prepay LLC, the Issuer or the Trustee in a timely manner regarding a matter or determination for which such party has the right to provide instructions hereunder, the Master Custodian shall not be liable for any delay in acting that is attributable to a delay or failure by Prepay LLC, the Issuer or the Trustee in providing such instructions to the Master Custodian, and the Master Custodian shall be fully protected in, and shall incur no liability whatsoever to Prepay LLC, the Issuer, the Trustee or any other Person in connection with, acting (or failing to act) pursuant to such instructions, provided that such instructions (i) are reasonably believed to have been given by an Authorized Officer and (ii) are authorized or permitted to be given under this Agreement. In the event that the Master Custodian shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction. The Master Custodian may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or non-action based on such declaratory judgment. Anything in this Agreement to the contrary notwithstanding, in no event shall the Master Custodian be liable for special, indirect, incidental or consequential damages, losses or penalties of any kind whatsoever (including but not limited to lost profits), regardless of the form of action.

The parties hereto acknowledge and agree that the Master Custodian is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities or liabilities with respect to its services hereunder. The Master Custodian shall not be required to risk or expend its own funds in performing its obligations under this Agreement. If and to the extent that Prepay LLC instructs the Master Custodian to settle transactions in the Prepay LLC Revenue Account, Prepay LLC (i) shall cause all such transactions to be fully funded by depositing with the Master Custodian sufficient immediately available funds (provided that this requirement shall be satisfied if sufficient funds are available in the Prepay LLC Capital Account for transfer to the Prepay LLC Revenue Fund consistent with Section 5(d) hereof), (ii) shall not rely on the Master Custodian to extend credit in order to settle any such transaction, and (iii) acknowledges that any transactions not fully funded by Prepay LLC may fail to settle. Subject to the requirements of Section 5(d) of this Agreement, if the Master Custodian, in its sole discretion, permits an overdraft in the Prepay LLC Revenue Account or if Prepay LLC is for any other reason indebted to the Master Custodian, Prepay LLC shall immediately deliver for credit to the Prepay LLC Revenue Account sufficient cash to eliminate such debit balance, plus accrued interest at a rate then charged by the Master Custodian to its institutional custody clients in the relevant currency, which rate shall be supplied by the Master Custodian to Prepay LLC from time to time.

Section 7. [Reserved.]

Section 8. <u>Removal, Resignation and Succession.</u>

- (a) The Master Custodian may be removed with 30 days' prior written notice by Prepay LLC, with a copy to each of the other parties hereto. Notwithstanding the foregoing, any such removal of the Master Custodian shall not be effective until a successor Master Custodian has been appointed pursuant to this <u>Section 8</u>. The Master Custodian's rights under this Agreement to indemnity and any amounts due and payable to the Master Custodian shall survive any such removal.
- (b) The Master Custodian may resign and be discharged from its duties or obligations hereunder by giving not less than 30 days' advance notice in writing of such resignation to the other parties hereto specifying a date when such resignation shall take effect; and such resignation shall take effect upon the day specified in such notice unless a successor shall not have been appointed by the other parties to this Agreement on such date, in which event such resignation shall not take effect until a successor is appointed.
- (c) In case at any time the Master Custodian shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Master Custodian, or of its property, shall be appointed, or if any public officer shall take charge or control of the Master Custodian, or of its property or affairs, Prepay LLC, Issuer and MSCG shall use their commercially reasonable efforts to appoint a successor custodian in a timely fashion, provided that any custodian appointed in succession to the Master Custodian shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least \$50,000,000 and shall be a bank with trust powers or trust company willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties

imposed upon it by this Agreement. Any corporation or association into which the Master Custodian may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the Master Custodian's corporate trust line of business may be transferred, shall be the Master Custodian under this Agreement without further act. Notwithstanding the foregoing, if no appointment of a successor Master Custodian shall be made pursuant to the foregoing provisions of this Section 8 within 30 days after (i) Prepay LLC has given notice to the Master Custodian and the other parties hereto of the Master Custodian's removal as provided in this Section 8 or (ii) the Master Custodian has given to the other parties hereto written notice of its resignation as provided in this Section 8, the Master Custodian may apply to any court of competent jurisdiction to appoint a successor Master Custodian. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Master Custodian.

Section 9. <u>Fees.</u> Prepay LLC agrees to (a) pay the Master Custodian reasonable compensation for the services to be rendered hereunder, which compensation shall be \$[___] for each year that this Agreement is in effect, and (b) pay or reimburse the Master Custodian upon request for all expenses, disbursements and advances, including reasonable attorney's fees and expenses, incurred or made by it in connection with the preparation, execution, performance, delivery, modification and termination of this Agreement.

Section 10. Reimbursement. Prepay LLC agrees to reimburse the Master Custodian and its directors, officers, agents and employees for any and all loss, liability or expense (including the fees and expenses of in-house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (a) its acting as the Master Custodian under this Agreement, except to the extent that such loss, liability or expense is finally adjudicated to have been caused primarily by the gross negligence or willful misconduct of the Master Custodian or such director, officer, agent or employee seeking reimbursement, or (b) its following any instructions or other directions from Prepay LLC, except to the extent that such instruction or direction is not authorized or permitted to be given under this Agreement; provided, however, that any amounts due under this Section 10 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 17 hereof. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Master Custodian or the termination of this Agreement.

Section 11. <u>Taxpayer Identification Numbers; Tax Matters</u>. Prepay LLC represents that its correct taxpayer identification number assigned by the Internal Revenue Service or any other taxing authority is set forth on the signature page hereof. Any tax returns or reports required to be prepared and filed in connection with the Prepay LLC Revenue Account and the Prepay LLC Capital Account will be prepared and filed by Prepay LLC and the Master Custodian shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned on the Prepay LLC Revenue Account and the Prepay LLC Capital Account. In addition, any tax or other payments required to be made pursuant to such tax return or filing shall be paid by Prepay LLC. The Master Custodian shall have no responsibility for making such payment unless directed to do so by the appropriate authorized party.

Section 12. <u>Notices</u>. All communications hereunder shall be in writing and shall be deemed to be duly given and received (a) upon delivery if delivered personally, upon confirmed

transmittal if by facsimile (provided that in the case of the Master Custodian, communications hereunder may not be transmitted by facsimile) and as set forth in the final paragraph of this Section 12 if by e-mail transmission; (b) on the next Business Day if sent by overnight courier; or (c) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address for each of the parties set forth in Exhibit A.

Any party may provide a new or different address for such notices or its wire instructions set forth in Exhibit A if furnished to the other parties in writing by registered mail, return receipt requested, provided furthermore that Prepay LLC may provide updated wire instructions pursuant to the foregoing for any of its contractual counterparties who are not party to this Agreement. Notwithstanding the above provisions of this Section 12, in the case of communications delivered to the Master Custodian pursuant to clause (b) or clause (c) of this Section 12, such communications shall be deemed to have been given on the date received by the Master Custodian. In the event that the Master Custodian, in its sole discretion, shall determine that an emergency exists, the Master Custodian may use such other means of communication as the Master Custodian deems appropriate.

Notwithstanding anything else in this Agreement to the contrary, the Master Custodian shall have the right to accept and act upon instructions or directions provided by a party pursuant to this Agreement, or any other document reasonably relating to the Bonds, if delivered using Electronic Means (as defined below); provided, however, that the applicable party shall provide to an officer of the Master Custodian who has responsibility with respect to the administration of this Agreement ("Responsible Officer") an incumbency certificate listing designated persons with the authority to provide such instructions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended, with written notice to a Responsible Officer of the Master Custodian, whenever an individual is to be added or deleted from the listing. If a party elects to give the Master Custodian directions or instructions using Electronic Means and the Master Custodian in its discretion elects to act upon such directions, the Master Custodian's understanding of such directions shall be deemed controlling. The party giving such instructions to the Master Custodian understands and agrees that the Master Custodian cannot determine the identity of the actual sender of such directions and that the Master Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to a Responsible Officer of the Master Custodian have been sent by such Authorized Officer. The party giving such instructions shall be solely responsible for ensuring that only Authorized Officers of such party transmit such directions to the Master Custodian and that the party and all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Master Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The party giving such instructions to the Master Custodian agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Master Custodian, including without limitation the risk of the Master Custodian acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the Master Custodian and that there may be more secure methods of transmitting directions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide

to it a commercially reasonable degree of protection in light of its particular needs and circumstances, (iv) to notify the Master Custodian immediately upon learning of any compromise or unauthorized use of the security procedures; and (v) to indemnify and hold harmless the Master Custodian against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) incurred or sustained by the Master Custodian as a result of or in connection with the Master Custodian's reliance upon and compliance with instructions or directions given by Electronic Means, except for any claim, damage or loss resulting from the gross negligence or willful misconduct of the Master Custodian (provided that, for the avoidance of doubt, any amounts due under clause (v) of this Section 12 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 10 or Section 17 hereof).

As used herein, "Electronic Means" shall mean instructions sent by S.W.I.F.T, e-mail and other similar secure electronic transmission platform containing applicable authorization codes, passwords and/or authentication keys issued by the Master Custodian ("Secure Platform") or another method or system specified by a Responsible Officer of the Master Custodian as available for use in connection with the Master Custodian's services hereunder. Access to and use of the Master Custodian's systems shall be subject to the terms and conditions contained in a separate written agreement. Prepay LLC, MSCG and the Issuer shall be responsible for requesting access to any such system of the Master Custodian and completing the documentation required for such access and nothing herein shall obligate the Master Custodian to ensure any such access and the Master Custodian shall have no responsibility or liability should such parties fail to, or elect not to, avail itself of such access. If the parties elect to use an on-line communications system owned or operated by a third party, the Master Custodian shall have no responsibility or liability for the reliability or availability of any such service. All funds transfer instructions shall be sent utilizing a Secure Platform unless otherwise agreed by the Master Custodian. When instructed to credit or pay a party by both name and a unique numeric or alpha-numeric identifier (e.g. ABA number or account number), the Master Custodian, and any other bank participating in the funds transfer, may rely solely on the unique identifier, even if it identifies a party different than the party named. This applies to beneficiaries as well as any intermediary bank. The parties hereto agree to be bound by the rules of any funds transfer network used in connection with any payment order accepted by the Master Custodian hereunder.

To the extent that any Cash Equivalents afford to the owner thereof the ability to exercise any rights or discretionary actions, the Master Custodian agrees, as promptly as practicable under the circumstances, to notify Prepay LLC thereof, provided that the Master Custodian, in its capacity as custodian of such Cash Equivalents, has actually received notice of such right or discretionary action from the relevant issuer, transfer agent or depository. Without actual receipt of such notice by the Master Custodian, the Master Custodian shall have no liability for failing to so notify Prepay LLC. Prepay LLC or its designee shall be solely responsible for making any decisions relating thereto and for directing the Master Custodian to act. In order for the Master Custodian to act, it must receive Prepay LLC's Corporate Action Instructions (defined below) by such time as the Master Custodian shall advise Prepay LLC or its designee. If the Master Custodian does not receive such Corporate Action Instructions by such deadline, the Master Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such Cash Equivalents. For the avoidance of doubt, any instruction given to the Master Custodian

relating to the exercise of rights or discretionary actions pursuant to this paragraph, must be given exclusively by Corporate Action Instructions.

As used herein "Corporate Action Instructions" shall mean instructions delivered to Master Custodian by Electronic Means, other than e-mail.

Notwithstanding anything to the contrary herein, a party may at any time notify the other parties in accordance with this Agreement that any subsequent notice or other communication hereunder must be provided to it by e-mail transmission for a specified period of time or until further notice, and any notices or other communications delivered by means other than e-mail transmission during such time shall be ineffective. Such notice will not be effective unless it includes a valid e-mail address for the party requesting that notices and other communications be delivered by e-mail transmission. Such party will take reasonable steps to ensure the continued availability of such e-mail address for the receipt of notices and other communications hereunder and will promptly notify the other parties in accordance with this Agreement of a change or modification as to the e-mail address or its availability to receive notices and other communications. Notices or other communications sent by e-mail transmission will be deemed to have been delivered when sent, if sent during the recipient's business hours, or upon the commencement of the recipient's business hours, if sent outside of recipient's business hours; provided that (i) any such notice by e-mail shall not be effective if a "bounce-back", system error message or other notification of non-delivery is received by the sender and (ii) in such case the noticing party may provide notices and communications by any other means permitted under this Agreement or may attempt providing notice again by e-mail (and any such follow-up e-mail notice shall be effective under the terms set forth above so long as a non-delivery notice is not received with respect thereto).

Section 13. Miscellaneous.

- (a) The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto.
- (b) Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Section 8, without the prior consent of the other parties; provided that, notwithstanding the foregoing, the parties acknowledge and agree that Prepay LLC shall assign all of its right, title and interest in, to and under this Agreement in connection with any assignment by Prepay LLC of its right, title and interest in, to and under the Prepaid Agreement consistent with the terms thereof to the same assignee, which assignment shall constitute a novation and shall not require the consent of the other parties hereto. It is acknowledged and agreed that the Master Custodian may require any assignee to furnish to the Master Custodian certain requested information to allow the Master Custodian to complete its "Know Your Customer" procedures and such assignment is subject to the satisfactory completion by the Master Custodian of its applicable customer identification procedures as in effect from time to time.
- (c) This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the State of New York, without regard to any conflicts of law principle that would direct the application of the laws another

jurisdiction; provided that the authority of the Issuer to enter into and perform its obligations shall be determined in accordance with the laws of the State of California.

- (d) Each party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the exclusive jurisdiction of (A) the courts of the State of New York located in the Borough of Manhattan, (B) the federal courts of the United States of America for the Southern District of New York or (C) the federal courts of the United States of America in any other state. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.
- (e) No party to this Agreement shall be liable to any other party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, epidemics, pandemics, nuclear or natural catastrophes or acts of God, or interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, or other causes reasonably beyond its control; provided that a party affected by any such event shall exercise commercially reasonable efforts to resume performance as quickly as possible.
- (f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by digital pdf transmission (provided that in the case of the Master Custodian, this Agreement may not be transmitted by facsimile) and such pdf will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.
- (g) The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates and subsidiaries located in multiple jurisdictions (the "BNY Mellon Group"). The BNY Mellon Group may (i) centralize in one or more affiliates and subsidiaries certain activities (the "Centralized Functions"), including audit, accounting, administration, risk management, legal, compliance, sales, product communication, relationship management, and the compilation and analysis of information and data regarding Prepay LLC (which, for purposes of this provision, includes the name and business contact information for Prepay LLC's employees and representatives) and the accounts established pursuant to this Agreement (the "Prepay LLC Information") and (ii) use third party service providers to store, maintain and process the Prepay LLC Information ("Outsourced Functions"). Notwithstanding anything to the contrary contained elsewhere in this Agreement and solely in connection with the Centralized Functions and/or Outsourced Functions, Prepay LLC consents to the disclosure of, and authorizes the Master Custodian to disclose, the Prepay LLC Information to (i) other members of the BNY Mellon Group (and their respective officers, directors and employees) and to (ii) third-party service providers (but solely in connection with Outsourced Functions), in each case, who are required to maintain the confidentiality of the Prepay LLC Information. In addition, the BNY Mellon Group may aggregate information regarding Prepay LLC and its accounts ("Prepay LLC-Related Data") with other data collected and/or calculated by the BNY Mellon Group (the "Aggregated Data"). The BNY Mellon Group will own all such Aggregated Data, provided that the Aggregated Data shall not identify, in any way, Prepay LLC or any of its assets, financial or trading information, or other proprietary information, and the BNY

Mellon Group agrees that it shall not distribute the Aggregated Data in a format that identifies Prepay LLC-Related Data (whether separately or with Aggregated Data) with Prepay LLC. Prepay LLC represents that it is authorized to consent to the foregoing and that the disclosure of the Prepay LLC Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation. Prepay LLC also consents to the disclosure of the Prepay LLC Information to the extent required by law.

Section 14. Compliance with Court Orders. In the event that any amount held by the Master Custodian hereunder shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, the Master Custodian is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing are binding upon it, whether with or without jurisdiction, and in the event that the Master Custodian obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree may be subsequently reversed, modified, annulled, set aside or vacated.

Section 15. Term; Winding Up. This Agreement will expire concurrently with the receipt of written notice from Prepay LLC, with a copy to the other parties, that either (a) the Prepaid Agreement, the Energy Management Agreement and the Back-End Commodity Swap have each been performed in accordance with their terms and there are no remaining obligations with respect thereto or (b) the Prepaid Agreement, the Energy Management Agreement and the Back-End Commodity Swap have each been terminated and any claims relating thereto have been resolved. If there is any remaining balance in the Prepay LLC Revenue Account or the Prepay LLC Capital Account at such time, then such amounts shall be paid to an account specified by MSCG as the sole member of Prepay LLC following written confirmation from (i) the Swap Counterparty that all required payments to the Swap Counterparty under the Back-End Swap have been paid to the Swap Payments Account, (ii) the Trustee that all required payments to Issuer under the Prepaid Agreement have been paid; and (iii) MSCG that all required payments under the Energy Management Agreement and the Subordinated Note have been paid.

Section 16. Third Party Beneficiaries. The Swap Counterparty shall be a third-party beneficiary of this Agreement with the right to enforce the provisions hereof relating to the Swap Payments Account. The Directors of Prepay LLC shall be third-party beneficiaries of this Agreement with the right to enforce the provisions hereof related to (a) any indemnity claim against Prepay LLC by a Director and (b) payment of any other amounts due to an Independent Director. Except as provided in the two immediately preceding sentences, it is specifically agreed that there are no other third-party beneficiaries of this Agreement and that this Agreement shall not impart any rights enforceable by any other person not a party to this Agreement.

Section 17. <u>Indemnification</u>. Prepay LLC agrees to protect, indemnify, defend and hold harmless, the Master Custodian, and affiliates, and each person who controls the Master Custodian from and against all claims, losses, liabilities, actions, suits, costs, judgments and expenses (including court costs and reasonable attorneys' fees) arising from its acting as Master Custodian hereunder, except for any claim, damage or loss resulting from the gross negligence or willful

misconduct of the Master Custodian; provided, however, that any amounts due under this Section 17 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 10 hereof. The obligations of this Section 17 shall survive any resignation or removal of the Master Custodian and the termination of this Agreement. Prepay LLC hereby grants the Master Custodian a lien, right of set-off and security interest in the Prepay LLC Capital Account for the payment of any claim by the Master Custodian for compensation, reimbursement or indemnity under this Agreement. In this regard, the Master Custodian shall be entitled to all the rights and remedies of a pledgee and secured creditor under applicable laws, rules or regulations as then in effect.

- Section 18. <u>USA PATRIOT Act</u>. The parties acknowledge that the Master Custodian is subject to federal laws, including the Prepay LLC Identification Program ("<u>CIP</u>") requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Master Custodian must obtain, verify and record information that allows the Master Custodian to identify Prepay LLC. Accordingly, prior to opening the Prepay LLC Revenue Account described in <u>Section 4</u> of this Agreement, the Master Custodian will ask Prepay LLC to provide certain information including but not limited to name, physical address, tax identification number and other information that will help the Master Custodian identify and verify Prepay LLC's identity, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Prepay LLC agrees that the Master Custodian cannot open any account hereunder unless and until the Master Custodian verifies Prepay LLC's identity in accordance with its CIP.
- Section 19. Resolution Stay Protocols. (a) In the event that the Master Custodian, MSCG or any of their affiliates (each, a "Covered Entity") become subject to a proceeding under a U.S. special resolution regime, the transfer of this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) were governed by the laws of the United States or a state of the United States; and
- (b) In the event any Covered Entity becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to this Agreement that may be exercised against such Covered Entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if this Agreement were governed by the laws of the United States or a state of the United States.

Section 20. Agents.

- (a) Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and, as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. The Master Custodian may rely on notices or other actions taken by Issuer or the Trustee.
- (b) Pursuant to the terms of the Energy Management Agreement, Prepay LLC has irrevocably appointed MSCG as its agent to issue notices and to take any other actions that Prepay

LLC is required or permitted to take under this Agreement. The Master Custodian may rely on notices or other actions taken by Prepay LLC or MSCG.

Section 21. Sanctions.

- (a) Throughout the term of this Agreement, MSCG agrees that it (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions (defined below), including measures to accomplish effective and timely scanning of all relevant data with respect to its clients and with respect to incoming or outgoing assets or transactions relating to this Agreement; (ii) shall exercise commercially reasonable efforts to ensure that neither it nor any of its affiliates, directors, officers, employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions; or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions.
- (b) MSCG and Prepay LLC shall not, directly or indirectly, use the services and/or the Prepay LLC Revenue Account or the Prepay LLC Capital Account in any manner that would result in its violation of Sanctions.
- (c) Prepay LLC and MSCG will promptly provide to the Master Custodian such information as the Master Custodian reasonably requests in connection with the matters referenced in this Section 21, including information regarding Prepay LLC and MSCG and the Prepay LLC Revenue Account and the Prepay LLC Capital Account and the cash or Cash Equivalents held, therein in relation to which services are to be provided hereunder and the source thereof, and the identity of any individual or entity having or claiming an interest therein. The Master Custodian may decline to act or provide services in respect of an account, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 21. If the Master Custodian declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, the Master Custodian will inform the other parties hereto as soon as reasonably practicable.

As used herein, "<u>Sanctions</u>" means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury) or any other applicable domestic or foreign authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

ENERGY PREPAY III, LLC By: Morgan Stanley Capital Group Inc., its Manager

By:
Name:
Title:
Title: Taxpayer ID Number:
1 3
MORGAN STANLEY CAPITAL GROUP
INC.
inc.
D
By:
Name:
Title:
CALIFORNIA COMMUNITY CHOICE
FINANCING AUTHORITY
B _V ·
By:
Name:
Title:
THE BANK OF NEW YORK MELLON, as
Master Custodian
By:
Name:
Title:

EXHIBIT A

NOTICE ADDRESSES AND WIRE INSTRUCTIONS

[To be completed post-closing.]

EXHIBIT B

NOTICE OF EARLY TERMINATION PAYMENT DATE

[Date]
The Bank of New York Mellon (the "Master Custodian") Corporate Trust – Dealing & Trading 240 Greenwich Street New York, NY 10286 Attention: []
Re: Master Custodial Agreement, dated as of [], 2025 (the "Custodial Agreement"), by and among Energy Prepay III, LLC ("Prepay LLC"), Morgan Stanley Capital Group Inc. ("MSCG"), California Community Choice Financing Authority ("Issuer") and The Bank of New York Mellon ("Master Custodian").
Capitalized terms used herein and not otherwise defined shall have the meaning assigned in the Custodial Agreement.
Pursuant to and in accordance with <u>Section 3(a)</u> of the Custodial Agreement, Prepay LLC hereby delivers this notice that an Early Termination Payment Date has been designated as of [DATE] and the Master Custodian is hereby directed, beginning on the Early Termination Payment Date and thereafter, to withdraw amounts on deposit in the Prepay LLC Revenue Account in accordance with <u>Section 4(e)</u> of the Custodial Agreement.
ENERGY PREPAY III, LLC By: Morgan Stanley Capital Group Inc., its Manager
Name:
Title:

EXHIBIT C

PREPAYMENT BALANCE

[To be attached.]

EXHIBIT A3

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "Agreement") is entered into as of [___] (the "Assignment Agreement Effective Date") by and among Clean Power Alliance of Southern California, a California joint powers authority ("PPA Seller"), San Diego Community Power, a California joint powers authority ("PPA Buyer"), and Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with one or more prepaid Energy transactions entered into between the Issuer, and a Prepay Seller, and with effect from and including the Assignment Period Start Date, PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) with respect to any and all Assignment Appendices (as defined below) during the Assignment Period (as defined below);

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will receive the Assigned Product specified in any and all Assignment Appendices in effect from time to time and MSCG will deliver such Assigned Product to Prepay Seller(s), which will redeliver such Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will assume responsibility for the Delivered Product Payment Obligation with respect to any and all Assignment Appendices then in effect.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the "Parties" hereto; each is a "Party") agree as follows:

AGREEMENT

1. Definitions.

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Agreement" has the meaning specified in the first paragraph above.

"Assigned Product" means the [Product] under and as defined in the PPA.

"Assigned Rights and Obligations" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Product in each Month as specified in any and all Assignment Appendices then in effect during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on <u>Appendix 1</u>, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSCG hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

"Assignment Agreement Effective Date" has the meaning set forth in the first paragraph above.

"Assignment Appendix" means each Assignment Appendix in the form attached hereto as Appendix 2 and delivered by MSCG hereunder pursuant to Section 11(f).

"Assignment Appendix End Date" has, with respect to each Assignment Appendix, the meaning specified therein.

"Assignment Appendix Period" means, with respect to each Assignment Appendix, the period from the Assignment Appendix Start Date to the Assignment Appendix End Date; provided that no Assignment Appendix Period may commence prior to the Assignment Period Start Date and no Assignment Appendix Period may extend beyond the Assignment Period End Date.

"Assignment Appendix Start Date" has, with respect to each Assignment Appendix, the meaning specified therein.

"Assignment Early Termination Date" has the meaning specified in Section 5(b).

"Assignment Period" has the meaning specified in Section 5(a).

"Assignment Period End Date" means 11:59:59 p.m. pacific prevailing time on [].

"Assignment Period Start Date" means [_____].

"Claims" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"Custodian" has, with respect to each Assignment Appendix, the meaning specified therein.

"Custody Agreement" has, with respect to each Assignment Appendix, the meaning specified therein.

"Delivered Product Payment Obligation" has the meaning specified in Section 3(a).

"Issuer" has, with respect to each Assignment Appendix, the meaning specified therein.

"Month" means a calendar month.

"Monthly Gross Amount" has the meaning specified in Section 3(c).

"MSCG" has the meaning specified in the first paragraph of this Agreement.

"PPA Buyer" has the meaning specified in the first paragraph of this Agreement.

"PPA Seller" has the meaning specified in the first paragraph of this Agreement.

"Prepaid Agreement" has, with respect to each Assignment Appendix, the meaning specified therein.

"Prepay Power Supply Contract" has, with respect to each Assignment Appendix, the meaning specified therein.

"Prepay Seller" has, with respect to each Assignment Appendix, the meaning specified therein.

"Receivables" has the meaning given to such term in <u>Section 3(f)</u>.

"Retained Rights and Obligations" has the meaning specified in Section 3.

2. Transfer and Undertakings.

- (a) PPA Buyer hereby assigns, transfers and conveys to MSCG all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product specified in any and all Assignment Appendices then in effect during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.
- (b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product specified in any and all Assignment Appendices then in effect and, subject to Section 3, the delegation of the Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period.
- (c) MSCG hereby accepts such assignment, transfer and conveyance of PPA Buyer's right, title and interest in and to the Assigned Product specified in any and all Assignment Appendices then in effect during the Assignment Period, and PPA Buyer's delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's and PPA Seller's rights and obligations under the PPA, and that all rights and obligations (including without limitation obligations with respect to payment for any Product not included in the Assigned Product and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "Retained Rights and Obligations" that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer and PPA Seller arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

- (a) Limited to Delivered Product Payment Obligation. MSCG's sole obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on Appendix 1 (the "Delivered Product Payment Obligation"). MSCG and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Product delivered during each Month of the Assignment Period specified in any and all Assignment Appendices then in effect on each applicable payment date under Section [] of the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, and shall remain so responsible to make such payments by the times and on the terms set out in the PPA in the event that either (i) MSCG does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.
- (b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations, and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.
- Appendices then in effect, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the "Monthly Gross Amount"). Promptly following PPA Buyer's receipt of each monthly invoice from PPA Seller during the Assignment Period specified in any and all Assignment Appendices then in effect and, in any event, no later than seven (7) days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG and (ii) a statement to each of MSCG and the Custodian indicating (A) the Monthly Gross Amount; (B) the Delivered Product Payment Obligation; and (C) the "Retained Payment Obligation", which shall be an amount equal to the Monthly Gross Amount minus the Delivered Product Payment Obligation. PPA Buyer and MSCG covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA; provided that (x) the liability of MSCG hereunder to PPA Seller is limited as described on Appendix 1 and (y) the Monthly Gross Amount payable to PPA Seller shall be reduced to the

extent that PPA Buyer disputes any of the invoiced amounts pursuant to Section [] of the PPA. PPA Buyer and MSCG may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and MSCG of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, the Parties acknowledge and agree that any invoice adjustments or reconciliations occurring after the initial settlement of amounts due under a monthly invoice shall be resolved exclusively between PPA Seller and PPA Buyer pursuant to the terms of the PPA.

- (d) **Scheduling**. All scheduling of Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during any Assignment Period specified in any and all Assignment Appendices then in effect (i) title to Assigned Product specified in any and all Assignment Appendices then in effect will pass to MSCG upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to one or more Prepay Sellers (as set forth in the applicable Assignment Appendix), Issuer (as set forth in the applicable Assignment Appendix) and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSCG's agent with regard to scheduling Assigned Product; and (iv) PPA Buyer will provide copies to MSCG of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under [Section] of the PPA, (D) invoices delivered of the PPA] (with a copy to the Custodian if and to the extent by PPA Seller under [Section retained by PPA Buyer and MSCG), and (E) any other information reasonably requested by MSCG relating to Assigned Product.
- (e) Amendments. PPA Buyer will provide written notice (including copies thereof) of any proposed or actual amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG's rights or obligations under this Agreement unless MSCG receives prior written notice thereof. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties.
- Seller(s) may purchase the rights to payment of the net amounts owed by PPA Buyer under the applicable Prepay Power Supply Contract ("Receivables") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by MSCG pursuant to the Assigned Rights and Obligations, the applicable Prepay Seller may sell such Receivables to MSCG and MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations. To effect such transfer, MSCG shall

deliver to PPA Seller a notice of intent to transfer Receivables not later than the payment due date for the Delivered Electricity Payment Obligations and shall deliver to PPA Seller a bill of sale signed by MSCG not later than five (5) Business Days thereafter.

4. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

- (a) Assignment Period. The "Assignment Period" under an Assignment Appendix shall begin on the Assignment Appendix Start Date and extend until the Assignment Appendix End Date or as otherwise terminated early pursuant to Section 5(b); provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date with respect to such Assignment Appendix; provided further that the Assignment Period under each Assignment Appendix will automatically terminate upon the expiration or early termination of either the [Delivery Term (as defined in the PPA)] or the PPA.
- (b) **Early Termination**. An "Assignment Early Termination Date" will occur under the following circumstances and as of the dates and for the applicable Assignment Appendices specified below:
 - i. delivery of a written notice of termination by either MSCG or PPA Buyer to each of the other Parties hereto, which Assignment Early Termination Date shall occur under the Assignment Appendices specified in such written notice and on the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer; or
 - the election of PPA Seller in its sole discretion to declare an Assignment Early Termination Date if MSCG fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSCG of written notice thereof, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect upon the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer; or
 - the election of PPA Seller in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSCG seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case

or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSCG commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSCG consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSCG or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect immediately on the date of PPA Seller's delivery of notice of its election to MSCG and PPA Buyer.

(c) Reversion of Assigned Rights and Obligations. The applicable Assignment Period(s) will end at the end of the last delivery hour on the date specified in any termination notice specified pursuant to Section 5(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Section 5(d) and at the expiration of any Assignment Period the Assigned Rights and Obligations under each applicable Assignment Appendix will revert from MSCG to PPA Buyer. Any Assigned Rights and Obligations under an Assignment Appendix that would become due for payment or performance on or after such Assignment Early Termination Date or early termination pursuant to Section 5(d) with respect to such Assignment Appendix shall immediately and automatically revert from MSCG to PPA Buyer; provided that (i) MSCG shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to MSCG prior to the Assignment Early Termination Date or prior to the expiration of an Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or expiration of the Assignment Period.

6. Representations and Warranties.

- (a) **Copy of PPA**. As of the Assignment Agreement Effective Date, PPA Seller and PPA Buyer represent and warrant to MSCG that a true, complete, and correct copy of the PPA as of such date is attached hereto as <u>Appendix 3</u>.
- (b) **No Default**. As of the Assignment Agreement Effective Date, PPA Seller and PPA Buyer represent and warrant to MSCG that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

- (c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSCG that:
 - i. It has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and
 - ii. All obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.
- (d) **Representations**. Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:
 - i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
 - ii. **Powers**. It has the power to execute, this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.
 - iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency presently in effect, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.
 - iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
 - v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws

affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bonafide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.
- viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

7. Miscellaneous.

Article [] (Confidential Information), [] (No Consequential Damages), [] (Amendments),
[_] (No Agency, Partnership, Joint Venture or Lease), Sections [_] (Severability), [_]
(Electronic Delivery), [] (Counterparts), Section [] (Binding Effect) and [] (Forward
Contract) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if
fully set forth herein.

8. Costs and Expenses.

The Parties shall each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

9. Notices.

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with [Section ___] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify MSCG of any updates to such notice information, including any updates provided by PPA

Seller to PPA Buyer. Notices to MSCG shall be provided to the address set forth in <u>Appendix 3</u>. Each Party may update its address from time to time by notice to the other Parties.

10. Governing Law; Dispute Resolution.

- (a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.
- Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall be determined by final, nonappealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within thirty (30) days of the commencement of the arbitration. If either MSCG or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the MSCG and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 10(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

- (c) <u>Judicial Reference</u>. Without limiting the provisions in <u>Section 10(b)</u>, if <u>Section 10(b)</u> is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10(c)(i).
 - i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "Disputing Party") shall provide the other Parties (the "Responding Parties") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within fifteen (15) days after receipt of the Dispute Response, (the "Negotiation Period"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 10(c).
 - ii. <u>Applicability; Selection of Referees</u>. Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer shall nominate one (1) referee. The two (2) referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric energy industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.
 - iii. <u>Inability to Agree upon Third Referee</u>. If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iv. Discovery; Proceedings.

- (A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.
- (B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.
- (C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.
- (D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.
- v. <u>Decision</u>. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- vi. <u>Expenses</u>. Each of MSCG, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller
- (d) **Assignment Appendix Prepaid Transaction Details**. From time to time, MSCG may deliver one or more completed Assignment Appendices to the other Parties hereto completing

the terms that are currently bracketed therein, and each such Assignment Appendix shall be binding upon each of the Parties hereto; provided that the aggregate sum of the Assigned Product under all Assignment Appendices then in effect will not exceed the Contract Quantity under and as defined in the PPA. As set forth in Appendix 1 hereto, MSCG's payment obligations are limited to any Assigned Product delivered pursuant to the Assignment Appendices then in effect. Each Assignment Appendix will set forth certain details relating to the commodity prepayment transaction pursuant to which all or a portion of the Assigned Product shall be delivered; provided that MSCG may, by written notice to PPA Seller and PPA Buyer, at any time and without the consent of PPA Seller or PPA Buyer, (i) rescind any Assignment Appendix or (ii) update or amend any Assignment Appendix to change any or all of the terms specified therein, including: an increase or decrease of the volume of Assigned Product to be delivered into the applicable commodity prepayment transaction (including without limitation a change thereto to reflect that all MWh of Assigned Product delivered in accordance with the PPA by PPA Seller shall be delivered into one commodity prepayment transaction, subject only the aggregate quantity limit specified above); a change in the relevant commodity prepayment transaction (i.e., the "Prepaid Agreement") pursuant to which the Assigned Product shall be delivered; a change in the identity of the Prepay Seller; or a change to the Assignment Appendix Start Date and / or the Assignment Appendix End Date. For the avoidance of doubt, (I) more than one Assignment Appendix may be in effect at any time, and (II) at any given time, less than one hundred percent (100%) of the Contract Quantity under and as defined in the PPA may be assigned pursuant to the Assignment Appendices then in effect.

10. U.S. Resolution Stay Protocol. The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSCG shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistences between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By:	
•	Name:
	Title:
SAN	N DIEGO COMMUNITY POWER
$\mathbf{R}_{\mathbf{V}}$	
Бу.	Name:
	Title:
МО	RGAN STANLEY CAPITAL GROUP INC
	Name:
	Title

Appendix 1 Assigned Rights and Obligations

PPA: []	
Delivery Point: []	
Further Information: []	
Limitation of MSCG Liability. MSCG has separately agre pursuant to the Custody Agreement to pay the "Day-Ahead As the custodial account specified in the Custody Agreement specified portion of the Assigned Product delivered to the De the Assignment Period pursuant to all Assignment Appendices Payments"). MSCG agrees for the benefit of the PPA Seller into the Custodial Account, and MSCG's payment obligation to making such payments into the Custodial Account, for app Agreement. PPA Buyer and PPA Seller each acknowledge an Price Payments into the Custodial Account by MSCG shall not in excess of the [Contract Price] for Assigned Product deliver pay less than the [Contract Price] for Assigned Product deliver pay less than the [Contract Price] for Assigned Product delim MSCG each acknowledge and agree that the making of Floatin Account by MSCG shall not entitle (i) MSCG to any payment Custodian's obligation to pay the Monthly Gross Amount to PP payment date in the PPA. At all times the PPA Buyer shall reall amounts owing under the terms of the PPA including the I invoice. At all times, PPA Buyer remains liable to PPA Sel under the PPA. For the avoidance of doubt, MSCG's obligation Assignment Appendices then in effect. "Day-Ahead Average Price" means the result of (i) (x) the surfor each Pricing Interval in a Month divided by (y) the number plus (ii) the Index Adder (as set forth in the table immediately used in this definition, "Pricing Interval" means the unit of time separate price. As used in this definition "Day-Ahead Market For Locational Marginal Price for [] for each [] for each price may be corrected or revised from time [], or as such price may be corrected or revised from time [], or as such price may be corrected or revised from time [], or as such price may be corrected or revised from time [verage Price" as defined below into (the "Custodial Account") for a clivery Point during each Month of then in effect (the "Floating Price to pay the Floating Price Payments sunder this Agreement are limited lication as provided in the Custody dagree that the making of Floating entitle (i) PPA Seller for payments red hereunder or (ii) PPA Buyer to vered hereunder. PPA Buyer and g Price Payments into the Custodial as from PPA Seller or (ii) affect the PA Seller on or before the applicable emain obligated for the payment of Monthly Gross Amount under each ler for all amounts due and owing ms hereunder are limited to only the emain of the Day-Ahead Market Prices of Pricing Intervals in such Month below) for the relevant Month. As the for which [] establishes a Price" means the Day Ahead Market ach applicable hour as published by
with its rules. For the avoidance of doubt, the Day-Ahead Aver	
Month Index Adder (\$	/MWh)

Month	Index Adder (\$/MWh)
	[]
	[]

Appendix 2

Assignment Appendix - [A][B][C]

Date: ["Assignment Appendix End Date" means 11:59:59 p.m. pacific prevailing time on [], 20[]. "Assignment Appendix Start Date" means [] 1, 20[]. "Custodian" means U.S. Bank Trust Company, National Association a national banking association. "Custody Agreement" means the [Amended & Restated Custodial Agreement] dated as of [], among the Issuer, PPA Buyer, MSCG, each applicable Prepay Seller and the Custodian, as from time to time amended, restated, supplemented or otherwise modified. "Issuer" means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seg. of the California Government Code, as amended). "Prepaid Agreement" means that certain Prepaid Energy Sales Agreement, dated as of [], 20[] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified. "Prepay Power Supply Contract" means that certain Power Supply Contract, dated as of [], 20[] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified. "Prepay Seller" means [____], a [____], or any other Person that is the prepay seller under the terms of the Prepaid Agreement from time to time. Assigned Product subject to this Assignment Appendix: As set forth immediately below, [the percentage of Assigned Product]/[the monthly quantities of Assigned Product] delivered to the Delivery Point: []

Appendix 3

MSCG Notice Information

[To be completed before signing.]

Appendix 4

Copy of PPA

[To be attached.]

EXHIBIT A4

LETTER AGREEMENT

[], 2025

Eric Washington Chief Financial Officer & Treasurer 815 E Street, Suite 12716 San Diego, CA 92112 Email: ewashington@sdcommunitypower.org

California Community Choice Financing Authority 1125 Tamalpais Avenue San Rafael, CA 94901

Email: [

Re: PPA Assignments for Delivery under Prepay Energy Agreements

Ladies and Gentlemen:

This Letter Agreement (this "Letter Agreement") confirms our mutual agreement with respect to the matters set forth below and relates to (i) that certain Power Supply Contract (the "Power Supply Contract"), dated as of the date hereof, by and between California Community Choice Financing Authority ("Issuer") and San Diego Community Power ("Project Participant"), (ii) that certain Prepaid Energy Sales Agreement (the "Prepaid Agreement"), dated as of the date hereof, by and between Energy Prepay III, LLC, a Delaware limited liability company ("Prepay LLC") and Issuer, and (iii) that certain Energy Management Agreement (the "Energy Management Agreement") (together with the Power Supply Contract and the Prepaid Agreement, the "Prepay Energy Agreements"), dated as of the date hereof, by and between Morgan Stanley Capital Group Inc. ("MSCG") and Prepay LLC. Any capitalized term used in this Letter Agreement and not otherwise defined herein shall have the meaning assigned to such term in the Power Supply Contract. In consideration of each party's execution of the respective Prepay Energy Agreements, as well as the premises above and the mutual covenants and agreements set forth herein, Issuer, Project Participant, Prepay LLC and MSCG (collectively, the "Parties") agree as follows:

1. PPA Assignments for Delivery under Prepay Energy Agreements.

- Initial Assignment. Concurrently with the execution of the Prepay Energy Agreements, Project Participant has assigned and Prepay LLC has agreed to assume a portion of Project Participant's rights and obligations under the Initial Assigned PPA.
- (b) Replacement Assignments. Commencing (i) six months prior to the expiration of any EPS Energy Period or the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract or (ii) otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, Project Participant shall exercise Commercially Reasonable Efforts to assign a portion of Project Participant's rights and obligations (the "Assigned Rights and Obligations") under one or more power purchase

agreements under which Project Participant is purchasing EPS Compliant Energy pursuant to an Assignment Agreement substantially in the form of (A) the Limited Assignment Agreement set forth as Exhibit A hereto if the PPA Supplier is an unrelated third party or (B) the Limited Assignment Agreement set forth as Exhibit B hereto if the PPA Supplier is MSCG (each, an "Assignment Agreement"), and the Parties shall cooperate in good faith with respect to any proposed assignments; provided that

- (1) any subsequent Assignment Agreement shall provide (I) for the assignment by Project Participant to either (a) Prepay LLC if MSCG is the PPA Supplier or (b) MSCG if the PPA Supplier is an unrelated third party of its right to receive all of the Energy (and any associated products set forth in the Assignment Agreement) delivered under the applicable power purchase agreement for each Month of the applicable EPS Energy Period and (II) for payment by Prepay LLC or MSCG as applicable to the PPA Supplier under such subsequent power purchase agreement of the Day-Ahead Average Price for each Month of the applicable EPS Energy Period, with such amounts to be credited in the PPA Supplier's monthly invoice to Project Participant against other amounts owed by Project Participant under the Assigned PPA during the EPS Energy Period;
- (2) any third party PPA Supplier must satisfy MSCG's internal credit and approval requirements and other requirements applied on a nondiscriminatory basis, including any "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies;
- (3) any such assignment must be agreed and consented to by Project Participant, Prepay LLC and MSCG in their reasonable discretion; and
- (4) the Parties recognize that MSCG will be obligated to sell and deliver Assigned Product it receives from a third-party PPA Supplier to Prepay LLC under the Energy Management Agreement; Prepay LLC will be obligated to deliver Assigned Product that it acquires to Issuer under the terms of the Prepaid Agreement; and Issuer will be obligated to deliver Assigned Product that it acquires to Project Participant under the terms of the Power Supply Contract.
- MSCG Procurement of EPS Compliant Energy. To the extent that (i) Project Participant, Prepay LLC and MSCG have not agreed upon a replacement assignment of a power purchase agreement by the date that is seventy-five (75) days prior to (A) the end of any EPS Energy Period or (B) the resumption of deliveries in a new Reset Period following Participant's issuance of a Remarketing Election Notice pursuant to Section 3.4 of the Power Supply Contract, or (ii) an early termination of an EPS Energy Period has occurred and Project Participant, Prepay LLC and MSCG have not agreed upon a replacement assignment of a power purchase agreement, then MSCG shall exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Project Participant, provided that:

- (1) Project Participant must consent to MSCG's procurement of any such EPS Compliant Energy for ultimate redelivery to Project Participant, with such consent not to be unreasonably withheld;
- the Parties shall act in good faith and in a Commercially Reasonable manner to (2) negotiate any necessary amendments to the Prepay Energy Agreements to facilitate the delivery of such EPS Compliant Energy; and
- (3) the period of delivery for any such EPS Compliant Energy (any such period, a "MSCG EPS Energy Period") shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in a subsequent Reset Period.
- Tax Opinion. The Parties acknowledge and agree that their ability to enter (d) into a new Reset Period will be contingent on obtaining an Opinion of Bond Counsel (as defined in the Bond Indenture), which will be dependent on the availability of EPS Compliant Energy for delivery in such Reset Period.
- Failure to Obtain EPS Compliant Energy. To the extent an EPS Energy Period terminates or expires and Project Participant and MSCG have been unable to obtain EPS Compliant Energy for delivery under the Prepay Energy Agreements pursuant to the provisions of Paragraph 1, then Prepay LLC shall remarket the Base Energy pursuant to the provisions of Exhibit C to the Prepaid Agreement, subject to the following:
 - the Parties' obligations set forth in <u>Paragraph 1</u> shall continue to apply; (a)
 - Project Participant shall not make any new commitment to purchase Priority Energy during such a remarketing; and
 - consistent with Section 7.5 of the Power Supply Contract, Project Participant shall exercise Commercially Reasonable Efforts to remediate any Disqualifed Remarketing Proceeds resulting from Prepay LLC's remarketing.
- Assignment Early Termination. With respect to any Assignment Agreement entered into among MSCG, Project Participant and a PPA Seller (as defined in the form of Assignment Agreement set forth as Exhibit A hereto), each of MSCG and Project Participant agree that it shall only exercise its right under an at will termination provision of an Assignment Agreement (as set forth in Section 5(b)(i) of Exhibit A hereto) to deliver a written notice of termination of an Assignment Period under an Assignment Agreement (or an Assignment Appendix under and as defined in an Assignment Agreement) consistent with the following:
 - either MSCG or Project Participant may deliver a notice of termination under the Assignment Agreement if any of the following occur:

- i. the assignment of the Prepay Power Supply Contract by Project Participant or Issuer pursuant to <u>Article XIII</u> thereof, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of such assignment;
- ii. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination; or
- iii. to the extent that MSCG and Project Participant have mutually agreed upon a replacement Assignment Agreement (as defined in the Prepay Power Supply Contract) that will replace the Assigned Rights and Obligations under the Assignment Agreement immediately following the termination thereof, with respect to which the Assignment Early Termination Date shall occur effective as of the end of the Month preceding the commencement of the "Assignment Period" under the replacement Assignment Agreement as specified in the notice from MSCG or Project Participant to the PPA Seller and the other Party hereto;
- (b) MSCG may, in its sole discretion, deliver a notice of termination of the Assignment Agreement if any of the following occur:
 - i. the suspension, expiration, or termination of performance of the PPA by either Project Participant or PPA Seller for any reason other than the occurrence of a Force Majeure Event under and as defined in the PPA, with respect to which the Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's or Project Participant's (as applicable) last performance under the PPA following such suspension, expiration, or termination;
 - ii. (A) any event or circumstance occurs that would either give either Project Participant or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether Project Participant or PPA Seller exercises such right), or (B) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or MSCG's rights or obligations under the Assignment Agreement (provided that MSCG shall not have a right to terminate under this clause (B) to the extent that MSCG (I) receives prior notice of such change and (II) provides its written consent thereto), with respect to which the Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election as determined by MSCG;
- (c) Project Participant may, in its sole discretion, deliver a notice of termination of the Assignment Agreement if any of the following occur:
 - i. if MSCG fails to pay when due any amounts owed under the Assignment Agreement in respect of any Delivered Product Payment Obligation and such failure continues for three (3) Business Days following receipt by MSCG of written notice thereof, with respect to which the Assignment Early Termination Date shall

- occur upon the date set forth in a written notice of such election delivered by Project Participant;
- ii. if any change, event or effect occurs, including but not limited a change in applicable laws or regulations, any issues with PPA Seller or the PPA, a dispute under the PPA or other similar circumstance, that individually or collectively have or are reasonably expected by Project Participant to have a material adverse effect upon (A) Project Participant, (B) its rights and obligations under the Assignment Agreement, the Prepay Power Supply Contract, or the PPA, or (C) the benefit Project Participant is receiving by assigning the Assigned Rights and Obligations, with respect to which the Assignment Early Termination Date shall be the date set forth in a written notice delivered by Project Participant to the PPA Seller and MSCG; provided that (x) Project Participant will provide notice to the PPA Seller and MSCG as soon as is reasonably possible that Project Participant anticipates exercising this termination right, and (y) Project Participant shall exercise commercially reasonable efforts to propose and agree with MSCG upon a replacement Assignment Agreement prior to exercising this termination right.

Any such notice sent in accordance with the foregoing provisions of this Section 3 shall specify therein the Assignment Early Termination Date.

For the avoidance of doubt, each of the Parties agrees that it shall not terminate an Assignment Agreement pursuant to the at will termination provision thereof (as set forth in Section 5(b)(i) of Exhibit A hereto) except as set forth immediately above.

4. **Representations**. Each Party represents to each of the other Parties:

- (a) **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
- Powers. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.
- No Violation or Conflict. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties

or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

- (d) **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (e) **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (f) Non-Reliance. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bonafide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- (g) Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.
- (h) **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.
- 5. **Counterparts**. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile or electronic transmission), each of which will be deemed an original.

- Costs and Expenses. The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.
- Amendments. No amendment, modification, or waiver in respect of this 7. Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- 8. Notices. Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon written 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

9. **Dispute Resolution.**

- Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of Project Participant and Issuer to enter into and perform their obligations under this Agreement shall be determined in accordance with the laws of the State of California.
- **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, nonappealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and Project Participant shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within thirty (30) days of the commencement of the arbitration. If either MSCG or Project Participant is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If MSCG and Project Participant-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators

shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorneys' fees reasonably incurred in seeking to enforce the application of this Section 9(b)1(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 9(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

- (c) **Judicial Reference.** Without limiting the provisions in <u>Section 9(b)</u>, if <u>Section 9(b)</u> is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 9(c)i.
 - i. <u>Notice of Dispute</u>. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within ten (10) Days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty (60) Days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other Parties written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this <u>Section 9(c)</u>.

ii. Applicability; Selection of Referees.

- (A) Within ten days of the delivery of an Impasse Notice, each of MSCG and Project Participant shall nominate one (1) referee. The two (2) referees (the "Party-Appointed Referees") shall appoint a third referee (the "Third Referee"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.
- (B) If the Party-Appointed Referees are unable to agree on the Third Referee within forty-five (45) Days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of Project Participant and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iii. <u>Discovery; Proceedings</u>.

- (A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within twenty (20) days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within one hundred eighty (180) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.
- (B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.
- (C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

- (D) All proceedings and hearings conducted before the referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the referees, and the referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.
- iv. <u>Decision</u>. The referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- v. <u>Expenses</u>. Each of MSCG and Project Participant shall bear the compensation and expenses of its respective Party-Appointed Referee, own counsel, witnesses, consultants and employees. All other expenses of judicial reference shall be split equally between MSCG and Project Participant.
- obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

[Signature Pages to Follow]

Very truly yours,

PREPAY LLC

	ENERGY PREPAY III, LLC
	By: Morgan Stanley Capital Group Inc., its Manager
	By:
	Name:
	Title:
	<u>MSCG</u>
	MORGAN STANLEY CAPITAL GROUP INC.
	By:
	Name:
	Title:
ACKNOWLEDGED, ACCEFabove:	PTED AND AGREED TO as of the date first set forth
<u>PARTICIPANT</u>	
SAN DIEGO COMMUNITY	POWER
By:	
Name:	
Title:	
<u>ISSUER</u>	
CALIFORNIA COMMUNIT	Y CHOICE FINANCING AUTHORITY
By:	
-	
Name: Title:	
	

EXHIBIT A

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR THIRD PARTY AS PPA SUPPLIER¹

This Limited Assignment Agreement (this "Agreement") is entered into as of [____] (the "Assignment Agreement Effective Date") by and among [PPA SELLER], a [____] limited liability company ("PPA Seller"), San Diego Community Power, a California joint powers authority ("PPA Buyer"), and Morgan Stanley Capital Group Inc., a Delaware corporation ("MSCG").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with one or more prepaid Energy transactions entered into between the Issuer, and a Prepay Seller, and with effect from and including the Assignment Period Start Date, PPA Buyer wishes to transfer by limited assignment to MSCG, and MSCG wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations with respect to any and all Assignment Appendices during the Assignment Period;

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will receive the Assigned Products specified in any and all Assignment Appendices in effect from time to time and MSCG will deliver such Assigned Products to Prepay Seller(s), which will deliver such Assigned Products to Issuer for ultimate delivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, MSCG will assume responsibility for the Delivered Product Payment Obligation with respect to any and all Assignment Appendices then in effect.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and MSCG (the "Parties" hereto; each is a "Party") agree as follows:

AGREEMENT

1. Definitions.

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when

¹ NTD: For added flexibility, we have updated the form of Limited Assignment Agreement to allow for PPA volumes to be allocated to multiple transactions pursuant to Assignment Appendices.

used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Agreement" has the meaning specified in the first paragraph above.

- "Assigned Product" means (i) [PV Energy] and (ii) [Green Attributes (PCC1)], as each is defined in the PPA.
- "Assigned Rights and Obligations" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Product in each Month as specified in any and all Assignment Appendices then in effect during the Assignment Period, as such rights may be limited or further described in the "Further Information" section on <u>Appendix 1</u>, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to MSCG hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.
- "Assignment Agreement Effective Date" has the meaning set forth in the first paragraph above.
- "Assignment Appendix" means each Assignment Appendix in the form attached hereto as Appendix 2 and delivered by MSCG hereunder pursuant to Section 11(f).
- "Assignment Appendix End Date" has, with respect to each Assignment Appendix, the meaning specified therein.
- "Assignment Appendix Period" means, with respect to each Assignment Appendix, the period from the Assignment Appendix Start Date to the Assignment Appendix End Date; provided that no Assignment Appendix Period may commence prior to the Assignment Period Start Date and no Assignment Appendix Period may extend beyond the Assignment Period End Date.
- "Assignment Appendix Start Date" has, with respect to each Assignment Appendix, the meaning specified therein.
 - "Assignment Early Termination Date" has the meaning specified in Section 5(b).
 - "Assignment Period" has the meaning specified in Section 5(a).
 - "Assignment Period End Date" means 11:59:59 p.m. pacific prevailing time on [____].
 - "Assignment Period Start Date" means [].
- "Claims" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

- "Custodian" has, with respect to each Assignment Appendix, the meaning specified therein.
- "Custody Agreement" has, with respect to each Assignment Appendix, the meaning specified therein.
 - "Delivered Product Payment Obligation" has the meaning specified in Section 3(a).
 - "Issuer" has, with respect to each Assignment Appendix, the meaning specified therein.
 - "Month" means a calendar month.
 - "Monthly Gross Amount" has the meaning specified in Section 3(c).
 - "MSCG" has the meaning specified in the first paragraph of this Agreement.
 - "PPA Buyer" has the meaning specified in the first paragraph of this Agreement.
 - "PPA Seller" has the meaning specified in the first paragraph of this Agreement.
- "Prepaid Agreement" has, with respect to each Assignment Appendix, the meaning specified therein.
- "Prepay Power Supply Contract" has, with respect to each Assignment Appendix, the meaning specified therein.
- "Prepay Seller" has, with respect to each Assignment Appendix, the meaning specified therein.
 - "Receivables" has the meaning given to such term in Section 3(f).
 - "Retained Rights and Obligations" has the meaning specified in Section 3.

2. Transfer and Undertakings.

- (a) PPA Buyer hereby assigns, transfers and conveys to MSCG all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Products specified in any and all Assignment Appendices then in effect during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to MSCG the Assigned Rights and Obligations during the Assignment Period.
- (b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Products specified in any and all Assignment Appendices then in effect and, subject to Section 3, the delegation of the Assigned Rights and Obligations to MSCG and the exercise and performance by MSCG of the Assigned Rights and Obligations during the Assignment Period.

(c) MSCG hereby accepts such assignment, transfer and conveyance of PPA Buyer's right, title and interest in and to the Assigned Products specified in any and all Assignment Appendices then in effect during the Assignment Period, and PPA Buyer's delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations (including without limitation obligations with respect to payment for any Product not included in the Assigned Product and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**" that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

- (a) Limited to Delivered Product Payment Obligation. MSCG's sole payment obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on Appendix 1 (the "Delivered Product Payment Obligation"). MSCG and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Products delivered during each Month of the Assignment Period specified in any and all Assignment Appendices then in effect on each applicable payment date under Section [] of the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period specified in any and all Assignment Appendices then in effect, including in the event that either (i) MSCG does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.
- (b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or MSCG, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations, and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.
- (c) **Invoicing**. During the Assignment Period specified in any and all Assignment Appendices then in effect, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"). Promptly following PPA Buyer's receipt of each monthly invoice from PPA Seller during the Assignment Period specified in any and all Assignment Appendices then in effect and, in any event, no later than seven (7) days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to MSCG and (ii) a statement to each of MSCG and the Custodian indicating (A) the Monthly

Gross Amount; (B) the Delivered Product Payment Obligation; and (C) the "Retained Payment Obligation", which shall be an amount equal to the Monthly Gross Amount minus the Delivered Product Payment Obligation. PPA Buyer and MSCG covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA; provided that (x) the liability of MSCG hereunder to PPA Seller is limited as described on Appendix 1 [and (y) the Monthly Gross Amount payable to PPA Seller shall be reduced to the extent that PPA Buyer disputes any of the invoiced amounts pursuant to Section [_] of the PPA]². PPA Buyer and MSCG may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and MSCG of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, the Parties acknowledge and agree that any invoice adjustments or reconciliations occurring after the initial settlement of amounts due under a monthly invoice shall be resolved exclusively between PPA Seller and PPA Buyer pursuant to the terms of the PPA.

- (d) **Scheduling**. All scheduling of Energy included in the Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during any Assignment Period specified in any and all Assignment Appendices then in effect (i) title to Assigned Products specified in any and all Assignment Appendices then in effect will pass to MSCG upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Products will pass to one or more Prepay Sellers (as set forth in the applicable Assignment Appendix), Issuer (as set forth in the applicable Assignment Appendix) and then to PPA Buyer upon delivery by MSCG at the same point where title is passed to MSCG pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as MSCG's agent with regard to scheduling Assigned Product; and (iv) PPA Buyer will provide copies to MSCG of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under [Section] of the PPA, (D) invoices delivered by PPA Seller under [Section of the PPA] (with a copy to the Custodian if and to the extent retained by PPA Buyer and MSCG), and (E) any other information reasonably requested by MSCG relating to Assigned Product.
- (e) Amendments. PPA Buyer will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to MSCG relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on MSCG's rights or obligations under this Agreement unless and until MSCG receives written notice thereof. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties.
- (f) **Setoff of Receivables**. Pursuant to the applicable Prepaid Agreement(s), Prepay Seller(s) has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer

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² NTD: For inclusion to the extent the PPA includes a provision allowing SDCP to withhold payment for disputed amounts.

under the applicable Prepay Power Supply Contract ("Receivables") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Products purchased by MSCG pursuant to the Assigned Rights and Obligations, the applicable Prepay Seller may sell such Receivables to MSCG and, provided that MSCG has notified PPA Seller in writing (with a copy to PPA Buyer) (a "Receivables Setoff Notice") that the amount of any such Receivables is true and accurate, MSCG may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that (1) at no time shall PPA Seller be required to pay MSCG for any amounts by which such Receivables exceed any Delivered Product Payment Obligations, and (2) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice. The amount of any Receivables set forth in a Receivables Setoff Notice shall be final and binding unless PPA Buyer shall have provided PPA Seller and MSCG a written notice within two (2) Business Days of its receipt of a Receivables Setoff Notice containing conclusive evidence that such amount is incorrect and asserting what PPA Buyer has determined is the correct amount of Receivables. If any dispute arises therefrom, MSCG shall still be entitled to set-off the amount of Receivables set forth in its Receivables Setoff Notice as provided above, and any such dispute as to the correct amount of Receivables shall be settled exclusively between PPA Buyer and PPA Seller with no liability to MSCG, provided that at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice.

4. Forward Contract.

The Parties acknowledge and agree that this Agreement is intended to constitute a "forward contract" and that the Parties is intended to constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

- (a) Assignment Period. The "Assignment Period" under an Assignment Appendix shall begin on the Assignment Appendix Start Date and extend until the Assignment Appendix End Date or as otherwise terminated early pursuant to Section 5(b); provided that in no event shall the Assignment Period extend beyond an Assignment Early Termination Date with respect to such Assignment Appendix; provided further that the Assignment Period under an Assignment Appendix will automatically terminate upon the expiration or early termination of either the [Delivery Term (as defined in the PPA)] or the PPA.
- (b) **Early Termination**. An "Assignment Early Termination Date" will occur under the following circumstances and as of the dates and for the applicable Assignment Appendices specified below:
 - i. delivery of a written notice of termination by either MSCG or PPA Buyer to each of the other Parties hereto, which Assignment Early Termination Date shall occur under the Assignment Appendices specified in such written

- notice and on the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer; or;
- ii. the election of PPA Seller in its sole discretion to declare an Assignment Early Termination Date if MSCG fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by MSCG of written notice thereof, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect upon the date set forth in a written notice of such election delivered by PPA Seller to MSCG and PPA Buyer; or
- iii. the election of PPA Seller in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against MSCG seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) MSCG commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or MSCG consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of MSCG or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur under all Assignment Appendices then in effect immediately on the date of PPA Seller's delivery of notice of its election to MSCG and PPA Buyer.
- (c) Reversion of Assigned Rights and Obligations. The applicable Assignment Period(s) will end at the end of the last delivery hour on the date specified in any termination notice specified pursuant to Section 5(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Section 5(d) and at the expiration of any Assignment Period the Assigned Rights and Obligations under each applicable Assignment Appendix will revert from MSCG to PPA Buyer. Any Assigned Rights and

Obligations under an Assignment Appendix that would become due for payment or performance on or after such Assignment Early Termination Date or early termination pursuant to Section 5(d) with respect to such Assignment Appendix shall immediately and automatically revert from MSCG to PPA Buyer; provided that (i) MSCG shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Products delivered to MSCG prior to the Assignment Early Termination Date or prior to the expiration of an Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or expiration of the Assignment Period.

(d) **Early Termination for PPA Termination**. The Assignment Periods under all Assignment Appendices will automatically terminate upon the expiration or early termination of the PPA.

6. Representations and Warranties.

- (a) **Copy of PPA**. As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to MSCG that a true, complete, and correct copy of the PPA as of such date is attached hereto as <u>Appendix 4</u>.
- (b) **No Default**. As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to MSCG that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that, to its knowledge, would give either of them the right to terminate the PPA or suspend performance thereunder.
- (c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to MSCG that:
 - i. It has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and
 - ii. To its knowledge, all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.
- (d) **Representations**. Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:
 - i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
 - ii. **Powers**. It has the power to execute, this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

- iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency presently in effect, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.
- iv. Consents. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bonafide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

7. Miscellaneous.

Article [] (Confidential Information), [] (No Consequential Damages), [] (Amendments),
[_] (No Agency, Partnership, Joint Venture or Lease), Sections [_] (Severability), [_]
(Electronic Delivery), [] (Counterparts), Section [] (Binding Effect) and [] (Forward
Contract) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if
fully set forth herein.

8. Costs and Expenses.

The Parties shall each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

9. Notices.

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with [Section ___] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify MSCG of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to MSCG shall be provided to the address set forth in <u>Appendix 3</u>. Each Party may update its address from time to time by notice to the other Parties.

10. Governing Law; Dispute Resolution.

- (a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.
- (b) <u>Arbitration</u>. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of MSCG and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the "chairperson") within thirty (30) days of the commencement of the arbitration. If either MSCG or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the MSCG and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson,

the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 10(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

- (c) <u>Judicial Reference</u>. Without limiting the provisions in <u>Section 10(b)</u>, if <u>Section 10(b)</u> is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10(c)(i).
 - i. <u>Notice of Dispute</u>. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within fifteen (15) days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Party may provide to the other

Parties written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this <u>Section 10(c)</u>.

- ii. <u>Applicability; Selection of Referees</u>. Within 10 days of the delivery of an Impasse Notice, each of MSCG and PPA Buyer shall nominate one (1) referee. The two (2) referees (the "**Party-Appointed Referees**") shall appoint a third referee (the "**Third Referee**", together with the Party-Appointed Referees, the "**Referees**"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric energy industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.
- iii. <u>Inability to Agree upon Third Referee</u>. If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and MSCG shall have one (1) peremptory challenge to the referee selected by the Court.

iv. <u>Discovery; Proceedings</u>.

- (A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.
- (B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.
- (C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

- (D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.
- v. <u>Decision</u>. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- vi. <u>Expenses</u>. Each of MSCG, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of MSCG, PPA Buyer, and PPA Seller
- Assignment Appendix Prepaid Transaction Details. From time to time, MSCG (d) may deliver one or more completed Assignment Appendices to the other Parties hereto completing the terms that are currently bracketed therein, and each such Assignment Appendix shall be binding upon each of the Parties hereto; provided that the aggregate sum of the Assigned Products under all Assignment Appendices then in effect will not exceed the Contract Quantity under and as defined in the PPA. As set forth in Appendix 1 hereto, MSCG's payment obligations are limited to any Assigned Products delivered pursuant to the Assignment Appendices then in effect. Each Assignment Appendix will set forth certain details relating to the commodity prepayment transaction pursuant to which all or a portion of the Assigned Products shall be delivered; provided that MSCG may, by written notice to PPA Seller and PPA Buyer, at any time and without the consent of PPA Seller or PPA Buyer, (i) rescind any Assignment Appendix or (ii) update or amend any Assignment Appendix to change any or all of the terms specified therein, including: an increase or decrease of the volume of Assigned Products to be delivered into the applicable commodity prepayment transaction (including without limitation a change thereto to reflect that all MWh of Assigned Products delivered in accordance with the PPA by PPA Seller shall be delivered into one commodity prepayment transaction, subject only the aggregate quantity limit specified above); a change in the relevant commodity prepayment transaction (i.e., the "Prepaid Agreement") pursuant to which the Assigned Products shall be delivered; a change in the identity of the Prepay Seller; or a change to the Assignment Appendix Start Date and / or the Assignment Appendix End Date. For the avoidance of doubt, (I) more than one Assignment Appendix may be in effect at any time, and (II) at any given time, less than one hundred percent (100%) of the Contract Quantity under and as defined in the PPA may be assigned pursuant to the Assignment Appendices then in effect.

10. U.S. Resolution Stay Protocol. The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, MSCG shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistences between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

IN WITNESS WHEREOF, the Parties have executed this Agreement effe	ective as of the
Assignment Agreement Effective Date.	

SELLER]	
Name	
Name:	_
Title:	-
N DIEGO COMMUNITY POWER	
Name:	_
Title:	-
ORGAN STANLEY CAPITAL GRO	UP INC.
:	
Name:	
T:41	-

Appendix 1 Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [], by and between PPA Buyer and PPA Seller, as may be amended from time to time.
Delivery Point: []
Further Information: PPA Seller shall transfer or, to the extent applicable, continue to transfer, to PPA Buyer the WREGIS Certificates associated with all [Renewable Energy Credits] corresponding to all [PV Energy] under the PPA pursuant to [Section of the PPA], provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both MSCG and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. All Assigned Product delivered by PPA Seller to MSCG shall be a sale made at wholesale, with MSCG reselling all such Assigned Product. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.
Limitation of MSCG Liability. MSCG has separately agreed with PPA Buyer and Custodian pursuant to the Custody Agreement to pay the "Day-Ahead Average Price" as defined below into the custodial account specified in the Custody Agreement (the "Custodial Account") for a specified portion of the Assigned Products delivered to the Delivery Point during each Month of the Assignment Period pursuant to all Assignment Appendices then in effect (the "Floating Price Payments"). MSCG agrees to pay the Floating Price Payments into the Custodial Account, and MSCG's payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement, which also provides for payment by (i) PPA Buyer of any other amounts due under the PPA for each Month of the Assignment Period and (ii) the Custodian of the net amount due to PPA Seller for each Month of the Assignment Period from the amounts received from MSCG and PPA Buyer, as applicable. MSCG's Floating Price Payments shall credit against and reduce the amounts otherwise due from PPA Buyer to PPA Seller under the PPA for each Month of the Assignment Period for all Assignment Appendices then in effect; provided that PPA Seller and PPA Buyer acknowledge and agree that the making of Floating Price Payments into the Custodial Account by MSCG shall not entitle (A) MSCG to any payments from PPA Seller or (B) PPA Seller to payments in excess of the PPA. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, MSCG's obligations hereunder are limited to only the Assignment Appendices then in effect.
"Day-Ahead Average Price" means the result of (i) (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month plus (ii) the Index Adder (as set forth in the table immediately below) for the relevant Month. As used in this definition, "Pricing Interval" means the unit of time for which [] establishes a separate price. As used in this definition "Day-Ahead Market Price" means the Day Ahead Market or Locational Marginal Price for [] for each applicable hour as published by

[], o	r as such price may	be corrected or r	evised from tin	ne to time by [] in accordance
with	its rules.	For the avoidance	of doubt, the Da	ay-Ahead Avera	age Price can be a	negative number.

Month	Index Adder (\$/MWh)
	[]
	[]
	[]
	[]
	[]

Assignment Appendix - [A][B][C]

Date: ["Assignment Appendix End Date" means 11:59:59 p.m. pacific prevailing time on [], 20[]. "Assignment Appendix Start Date" means [] 1, 20[]. "Custodian" means The Bank of New York Mellon Trust Company, N.A., a national banking association. "Custody Agreement" means the [Custodial Agreement] dated as of [____], among the Issuer, PPA Buyer, MSCG, each applicable Prepay Seller and the Custodian, as from time to time amended, restated, supplemented or otherwise modified. "Issuer" means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seg. of the California Government Code, as amended). "Prepaid Agreement" means that certain Prepaid Energy Sales Agreement, dated as of [], 20[] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified. "Prepay Power Supply Contract" means that certain Power Supply Contract, dated as of [], 20[] by and between Prepay Seller and Issuer, as from time to time amended, restated, supplemented or otherwise modified. "Prepay Seller" means [____], a [____], or any other Person that is the prepay seller under the terms of the Prepaid Agreement from time to time. Assigned Products subject to this Assignment Appendix: As set forth immediately below, [the percentage of Assigned Products]/[the monthly quantities of Assigned Products] delivered to the Delivery Point: []

MSCG Notice Information

[To be completed before signing.]

Copy of PPA

[To be attached.]

EXHIBIT B

FORM OF LIMITED ASSIGNMENT AGREEMENT FOR MSCG AS PPA SUPPLIER³

This Limited Assignment Agreement (this "Agreement") is entered into as of [____], 2025 ("Assignment Agreement Effective Date") by and among Morgan Stanley Capital Group Inc., a Delaware corporation ("PPA Seller"), San Diego Community Power, a California joint powers authority ("PPA Buyer"), and Energy Prepay III, LLC, a Delaware limited liability company ("Prepay LLC").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA as defined in Appendix 1 hereto (the "PPA");

WHEREAS, in connection with a prepaid electricity transaction entered into between California Community Choice Financing Authority ("Issuer"), and Prepay LLC, and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by partial assignment to Prepay LLC, and Prepay LLC wishes to accept the transfer by partial assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below); and

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Prepay LLC (the "Parties" hereto; each is a "Party") agree as follows:

AGREEMENT

1. Definitions.

The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Agreement" has the meaning specified in the first paragraph above.

"Assigned Delivery Point" has the meaning specified in Appendix 1.

"Assigned Products" means [all Products] under and as defined in the PPA.

"Assigned Rights and Obligations" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Products in each Month during the Assignment Period, as such rights may be limited or further described in <u>Appendix 1</u>, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to Prepay LLC hereunder.

³ NTD: We have updated the form consistent with the final form of LAA agreed upon by SDCP and MSCG for the bridge PPA for the first transaction.

"Assignment Early Termination Date" has the meaning specified in Section 5(b).	
"Assignment Period" has the meaning specified in Section 5(a).	
"Assignment Period End Date" means 11:59:59 p.m. pacific prevailing time on [].
"Assignment Period Start Date" means [].	

"Business Day" has the meaning specified in the Prepaid Agreement.

"Claims" means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys' fees, experts' fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

"Custodian" means U.S. Bank Trust Company, National Association.

"Day-Ahead Average Price" has the meaning specified in Appendix 1.

"Delivered Product Payment Obligation" has the meaning specified in Section 3(a).

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours (MWh).

"Government Agency" means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

"Issuer" has the meaning specified in the first paragraph of this Agreement.

"Month" means a calendar month.

"MWh" has the meaning specified in the Prepaid Agreement.

"Person" means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

"PPA Buyer" has the meaning specified in the first paragraph of this Agreement.

"PPA Seller" has the meaning specified in the first paragraph of this Agreement.

"Prepaid Agreement" means that certain Prepaid Energy Sales Agreement dated as of [____], 2025 by and between Prepay LLC and Issuer.

"Prepay LLC" has the meaning specified in the first paragraph of this Agreement.

"Prepay Power Supply Contract" means that certain Power Supply Contract dated [, 2025 by and between PPA Buyer and Issuer.

"Receivables" has the meaning given to such term in Section 3(e).

"Retained Rights and Obligations" has the meaning specified in Section 3.

2. Transfer and Undertakings.

- (a) PPA Buyer hereby assigns, transfers and conveys to Prepay LLC all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Products during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to Prepay LLC the Assigned Rights and Obligations during the Assignment Period.
- (b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Products and, subject to Section 3, the delegation of the Assigned Rights and Obligations to Prepay LLC and the exercise and performance by Prepay LLC of the Assigned Rights and Obligations during the Assignment Period.
- (c) Prepay LLC hereby accepts such assignment, transfer and conveyance of PPA Buyer's right, title and interest in and to the Assigned Products during the Assignment Period, and PPA Buyer's delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**", and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) Limited to Delivered Product Payment Obligation. Prepay LLC's sole payment obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on <u>Appendix 1</u> (the "Delivered Product Payment Obligation"). Prepay LLC and PPA Buyer each agree to instruct the Custodian to pay PPA Seller for the Assigned Products delivered during each Month of the Assignment Period on each applicable payment date under the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, including in the event that either (i) Prepay LLC does not make the payments into the Custodial Account as described above or (ii) the

Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.

- (b) **Retained Rights and Obligations**. Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or Prepay LLC, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.
- (c) **Scheduling**. All scheduling of Energy (including Assigned Products) and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide copies of all billing statements and generation reports delivered during the Assignment Period to Prepay LLC and Issuer contemporaneously upon delivery of such statements and reports to the other party to the PPA; (ii) title to Assigned Products will pass to Prepay LLC upon delivery by PPA Seller at the Assigned Delivery Point in accordance with the PPA; (iii) immediately thereafter, title to such Assigned Products will pass to Issuer and then to PPA Buyer upon delivery by Prepay LLC at the same point where title is passed to Prepay LLC pursuant to clause (ii) above; and (iv) PPA Buyer will be deemed to be acting as Prepay LLC's agent with regard to scheduling Assigned Products.
- (d) Amendments. PPA Buyer and PPA Seller will provide written notice (including copies thereof) of any proposed or actual amendment, waiver, supplement, modification, or other changes to the PPA to Prepay LLC prior to the effectiveness thereof, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on Prepay LLC's rights or obligations under this Agreement unless Prepay LLC receives prior written notice thereof.
- Setoff of Receivables. Pursuant to the Prepaid Agreement, Prepay LLC has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("Receivables") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Products purchased by Prepay LLC pursuant to the Assigned Rights and Obligations, Prepay LLC may, provided that Prepay LLC has notified PPA Seller in writing (with a copy to PPA Buyer) (a "Receivables Setoff Notice") that the amount of any such Receivables is true and accurate, transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay Prepay LLC for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller. The amount of any Receivables set forth in a Receivables Setoff Notice shall be final and binding unless PPA Buyer shall have provided PPA Seller and Prepay LLC a written notice within two (2) Business Days of its receipt of a Receivables Setoff Notice containing conclusive evidence that such amount is incorrect and asserting what PPA Buyer has determined is the correct amount of Receivables. If any dispute

arises therefrom, Prepay LLC shall still be entitled to set-off the amount of Receivables set forth in its Receivables Setoff Notice as provided above, and any such dispute as to the correct amount of Receivables shall be settled exclusively between PPA Buyer and PPA Seller with no liability to Prepay LLC, provided that at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA.

4. Forward Contract.

The Parties acknowledge and agree that this Agreement is intended to constitute a "forward contract" and that the Parties is intended to constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

- (a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend through and including the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date.
- (b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:
 - i. the assignment of the Prepay Power Supply Contract by PPA Buyer or Issuer pursuant to <u>Article XIII</u> thereof, which Assignment Early Termination Date shall occur immediately as of the time of such assignment;
 - ii. the suspension, expiration, or termination of performance of the PPA by either PPA Buyer or PPA Seller for any reason other than the occurrence of Force Majeure under and as defined in the PPA, which Assignment Early Termination Date shall occur immediately as of the time of PPA Seller's last performance under the PPA following such suspension, expiration, or termination;
 - iii. the election of Prepay LLC in its sole discretion to declare an Assignment Early Termination Date as a result of (a) any event or circumstance that would give either PPA Buyer or PPA Seller the right to terminate or suspend performance under the PPA (regardless of whether PPA Buyer or PPA Seller exercises such right) or (b) the execution of an amendment, waiver, supplement, modification or other change to the PPA that adversely affects the Assigned Rights and Obligations or Prepay LLC's rights or obligations under this Agreement (provided that Prepay LLC shall not have a right to terminate under this clause (b) to the extent that Prepay LLC (i) receives prior notice of such change and (ii) provides its written consent thereto), which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by Prepay LLC to PPA Buyer and PPA Seller;
 - iv. termination or suspension of deliveries for any reason other than force majeure under the Prepaid Agreement or Prepay Power Supply Contract, which Assignment Early Termination Date shall occur immediately as of the time of the last deliveries under the relevant contract following such suspension or termination;

- v. the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if Prepay LLC fails to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five Business Days following receipt by Prepay LLC of written notice thereof, which Assignment Early Termination Date shall occur upon the date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to Prepay LLC, and with a copy to PPA Buyer or PPA Seller, as applicable; and
- the election of PPA Seller or PPA Buyer in its sole discretion to declare an Assignment Early Termination Date if either (a) an involuntary case or other proceeding is commenced against Prepay LLC seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing is entered and continued unstayed and in effect, in any such event, for a period of 60 days, or (b) Prepay LLC commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated as bankrupt or insolvent, or Prepay LLC consents to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, files a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consents to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of Prepay LLC or any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, which Assignment Early Termination Date shall occur upon the earliest date set forth in a written notice of such election delivered by PPA Seller or PPA Buyer, as applicable, to Prepay LLC, and with a copy to PPA Buyer or PPA Seller, as applicable.
- (c) Reversion of Assigned Rights and Obligations. The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, the Assigned Rights and Obligations will revert from Prepay LLC to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from Prepay LLC to PPA Buyer, provided that (i) Prepay LLC shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Products delivered to Prepay LLC prior to the Assignment Early Termination Date, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date.

6. Representations and Warranties.

- (a) **Copy of PPA**. As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Prepay LLC that a true, complete, and correct copy of the PPA is attached hereto as Appendix 3.
- (b) **No Default**. As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Prepay LLC that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that, to its knowledge, would give either of them the right to terminate the PPA or suspend performance thereunder.
- (c) **Other**. As of the Assignment Agreement Effective Date, each of PPA Buyer and PPA Seller represents and warrants to each other and to Prepay LLC that:
 - i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and
 - ii. to its knowledge, all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.
 - (d) **Representations**. Each Party represents to each of the other Parties:
 - i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.
 - ii. **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.
 - iii. **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.
 - iv. Consents. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this

Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

- v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bonafide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.
- viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

7. Counterparts.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by email), each of which will be deemed an original.

8. Costs and Expenses.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

9. Amendments.

No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing and executed by each of the Parties.

10. Notices.

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 2 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices be directed to another Person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, a Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

11. Governing Law, Waiver of Jury Trial, Arbitration.

- (a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without reference to any conflicts of law provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this Agreement shall be determined in accordance with the laws of the State of California.
- (b) Waiver of Right to Trial by Jury. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement.
- Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of Prepay LLC and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall select one (1) person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, Prepay LLC, PPA Buyer and PPA Seller are the "Arbitration Parties"), provided that if the arbitration pertains to matters and disputes solely as between PPA Buyer and Prepay LLC, and PPA Seller is neither asserting nor defending a claim in relation thereto, then each of Prepay LLC and PPA Buyer shall select one (1)

person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, only Prepay LLC and PPA Buyer are the "Arbitration Parties"). The JAMS appointed arbitrator shall serve as the chairperson (the "chairperson"). If any of the Arbitration Parties are unable or fail to select one (1) person to act as arbitrator, such arbitrator shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energyrelated transactions, and none of the arbitrators shall have been previously employed by any Arbitration Party or have any direct pecuniary interest in any Arbitration Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Arbitration Parties. The Arbitration Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Arbitration Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three (3) arbitrators and all other expenses charged by JAMS shall be shared equally between or among the Arbitration Parties, as the case may be. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Arbitration Party or Arbitration Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(c) by the prevailing party in connection with the arbitration, and the non-prevailing Arbitration Party or Arbitration Parties shall also be liable to the prevailing Arbitration Party or Arbitration Parties for the compensation and expenses of the three arbitrators and all costs charged by JAMS. Notwithstanding the foregoing provisions of this Section 11(c), any costs incurred by an Arbitration Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Arbitration Party against whom such court order is obtained. The award shall be final and binding on the Arbitration Parties and judgment upon any award may be entered in any court of competent jurisdiction.

- (d) **Judicial Reference**. Without limiting the provisions in <u>Section 11(c)</u>, if <u>Section 11(c)</u> is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "Reference Proceeding"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(d)i.
 - i. <u>Notice of Dispute</u>. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**"; and together with the Disputing Party, the "**Dispute Parties**") with a written notice of each

issue in dispute, a proposed means for resolving each such issue, and support for such position (the "Notice of Dispute"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "Dispute Response"). If the Notice of Dispute makes no claim or assertion against one of the Responding Parties, and such Responding Party, in making its Dispute Response does not make or assert a claim against either the Disputing Party or the other Responding Party and states that it has no interest in the Dispute, then such Responding Party shall not participate in the resolution of the Dispute and shall not be a "Dispute Party" for purposes of this Section 11(d). Thereafter, the Dispute Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Dispute Parties do not resolve the dispute by unanimous agreement within sixty (60) days after receipt of the Dispute Response, then any Dispute Party may provide to the other Dispute Party(ies) written notice of intent for judicial reference (the "Impasse Notice") in accordance with the further provisions of this Section 11(d).

- ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of Prepay LLC and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall nominate one (1) referee, provided that if PPA Seller is not a Dispute Party, then each of Prepay LLC and PPA Buyer shall nominate (1) referee, and PPA Seller will not nominate a referee. The two (2) referees (the "Party-Appointed Referees") shall unanimously appoint one (1) additional referee (the "Additional Referee", together with the Party-Appointed Referees, the "Referees"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Additional Referee shall be an active or retired California state or federal judge (the "Head Referee"). Each of the Party-Appointed Referees and the Additional Referee shall be impartial and independent of each of the Dispute Parties and of the other referees and not employed by any of the Dispute Parties in any prior matter.
 - (A) If the Party-Appointed Referees are unable to agree on the Additional Referee within 45 days from delivery of the Impasse Notice, then the Additional Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "Court"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Dispute Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and Prepay LLC, on the one hand, and PPA Seller, on the other hand, shall have one (1) peremptory challenge to the referee selected by the Court, provided that if PPA Seller is not a Dispute Party, then each of Prepay LLC and PPA Buyer shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

- (A) The Dispute Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Head Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.
- (B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Dispute Parties, or if they cannot agree, as determined by the Head Referee after discussion with the Dispute Parties regarding the need for discovery and other pre-hearing procedures.
- (C) Except as expressly set forth herein, the Head Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Dispute Parties, or if not agreed by the Dispute Parties, by the Head Referee, in San Francisco, California.
- (D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Dispute Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Dispute Party making such a request shall have the obligation to arrange for and pay the court reporter.
- iv. <u>Decision</u>. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Dispute Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.
- (e) <u>Expenses</u>. The Dispute Parties shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be shared equally between or among the Dispute Parties, as the case may be.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.
MORGAN STANLEY CAPITAL GROUP INC.
By: Name: Title:
SAN DIEGO COMMUNITY POWER
By: Name: Title:
ENERGY PREPAY III, LLC By: Morgan Stanley Capital Group Inc., its Manager
By:

Title:

Signature Page to Limited Assignment Agreement

Appendix 1 Assigned Rights and Obligations

PPA: The EEI Master Power Purchase and Sale Agreement dated January 21, 2021, between PPA
Buyer and PPA Seller, as amended by that First Amendment to Master Power Purchase and Sale
Agreement dated as of February 8, 2021 between PPA Buyer and PPA Seller, as amended and
supplemented by (i) that certain Confirmation Bundled Renewable Energy (PCC2), dated [],
2025 between PPA Buyer and PPA Seller and (ii) that certain PCC2 & Import Energy
Confirmation, dated [], 2025 (each of (i) and (ii), a "PPA Transaction Confirmation").

Assigned Delivery Point: The "Delivery Point" as defined in each of the PPA Transaction Confirmations.

Floating Price Payments. Prepay LLC has separately agreed with the PPA Buyer and the Custodian (pursuant to the Custodial Agreement dated [], 2025, among PPA Buyer, Issuer, Prepay LLC, PPA Seller and the Custodian (the "Custody Agreement")) to pay into the custodial account specified in the Custody Agreement (the "Custodial Account") for Assigned Products delivered in each Month of the Assignment Period at the Day-Ahead Average Price ("Floating Price Payments"). Prepay LLC agrees for the benefit of the PPA Seller to pay the Floating Price Payments into the Custodial Account, and Prepay LLC's payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement. PPA Buyer and PPA Seller each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Prepay LLC shall not entitle (i) PPA Seller for payments in excess of the Contract Price for Assigned Products delivered hereunder or (ii) PPA Buyer to pay less than the Contract Price for Assigned Products delivered hereunder. PPA Buyer and Prepay LLC each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Prepay LLC shall not entitle (i) Prepay LLC to any payments from PPA Seller under the PPA or (ii) affect the Custodian's obligation to pay the net amount due to PPA Seller pursuant to the terms of the PPA on or before the applicable payment date in the PPA. At all times the PPA Buyer shall remain obligated for the payment of all amounts owing under the terms of the PPA under each invoice.

Day-Ahead Average Price: The result of (i) (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month plus (ii) the Index Adder (as set forth in the table immediately below) for the relevant Month. As used in this definition, "**Pricing Interval**" means each unit of time for which CAISO establishes a separate price. As used in this definition, "**Day-Ahead Market Price**" means the Day-Ahead Market or Locational Marginal Price for TH_SP15_GEN-APND (or any successor aggregated pricing node for SP 15) for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by CAISO in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

Month	Index Adder (\$/MWh)

Month	Index Adder (\$/MWh)
	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	[]
[]	
[]	[]
[]	[]
[]	
	[]
[]	
[]	

Further Information: For each Month of the Assignment Period, PPA Seller agrees that the monthly invoices it delivers under Section 6.1 of the PPA shall separately list the separate pricing components relevant for the determination of the amounts due under each such invoice.

Appendix 2 Notice Information

PPA Seller:

As set forth in the PPA

PPA Buyer:

As set forth in the PPA

Prepay LLC:

Energy Prepay III, LLC c/o Morgan Stanley & Co. [1585 Broadway New York, NY 10036-8293]

With a mandatory copy to: msdoc-misc-notices@morganstanley.com and [SDCP_2025[X]_ms_notices@morganstanley.com]

Copy of PPA

[To be attached.]

EXHIBIT A5

PREPAID ENERGY PROJECT ADMINISTRATION AGREEMENT

This Prepaid Energy Project Administration Agreement (this "Agreement") is made and entered into as of [______], 2025, by and between California Community Choice Financing Authority ("CCCFA") and San Diego Community Power ("SDCP"), with respect to the Prepaid Energy Project (defined below). CCCFA and SDCP may be referred to individually herein as a "Party" and collectively as the "Parties". Capitalized terms used herein (including in the following Recitals) have the meanings given to such terms in Section 1.

<u>W I T N E S S E T H</u>:

WHEREAS, SDCP is a "community choice aggregator" under the Public Utilities Code; and

WHEREAS, SDCP and certain other community choice aggregators have joined CCCFA as a joint exercise of powers authority under and pursuant to the Act and the Joint Powers Agreement; and

WHEREAS, CCCFA's purpose is to assist its Members (as defined in the Joint Powers Agreement), including SDCP, by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined in the Joint Powers Agreement) and entering into related contracts with Members; and

WHEREAS, CCCFA and SDCP are entering into a Power Supply Contract pursuant to which CCCFA has agreed to supply Energy to SDCP under the terms set forth therein; and

WHEREAS, in order to provide such Energy to SDCP under the Power Supply Contract, CCCFA is entering into the Prepaid Energy Sales Agreement with Energy Prepay III, LLC, a Delaware limited liability company (the "Energy Supplier"), under which it will make a prepayment to the Energy Supplier for the purchase and delivery of such Energy; and

WHEREAS, CCCFA will finance the prepayment under the Prepaid Energy Sales Agreement and related costs by issuing the Bonds pursuant to the Indenture; and

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. <u>Defined Terms</u>. Capitalized terms used herein shall have the meanings set forth below:

"Act" means Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended.

item7-exhibit-a-5-Project Agreement.docx

"Annual Refund" means the annual refund, if any, to be provided to SDCP pursuant to Section 3.2(b) of the Power Supply Contract.

"Assigned Delivery Point" has the meaning specified in the Assignment Agreement.

"Assigned Energy" has the meaning specified in the Assignment Agreement.

"Assigned Product" means Assigned Energy and associated renewable energy credits, green energy attributes and any other product included in the Assignment Agreement.

"Assignment Agreement" means the Initial Assignment Agreement and any subsequent assignment agreement entered into consistent with the Assignment Letter Agreement.

"Assignment Letter Agreement" has the meaning specified in the Power Supply Contract.

"Base Energy" means Energy to be delivered to an Energy Delivery Point.

"Bonds" means the bonds issued by CCCFA pursuant to the Indenture on or about the date of this Agreement in order to finance the prepayment required to be made to the Energy Supplier under the Prepaid Energy Sales Agreement and related costs of the Prepaid Energy Project, and any bonds issued to refund such bonds.

"CCCFA" means California Community Choice Financing Authority, a joint exercise of powers authority created under and pursuant to the Act and the Joint Powers Agreement.

"CCCFA Commodity Swap" means the ISDA Master Agreement, Schedule and transaction Confirmation entered into by CCCFA and the swap counterparty named therein, and any replacement swap entered into pursuant to the Prepaid Energy Sales Agreement.

"Contract Quantity" means the quantity of Base Energy or Assigned Energy, as applicable, specified in Exhibits A-1 and A-2 of the Power Supply Contract, as such Exhibits A-1 and A-2 may be updated from time to time in accordance with the terms of the Power Supply Contract.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt-hours.

"Energy Delivery Point" means the delivery point for delivery of SDCP's Contract Quantity as specified in the Power Supply Contract, and shall include, if applicable, any Assigned Delivery Point and any alternate Delivery Point for SDCP.

"Energy Supplier" means Energy Prepay III, LLC, a Delaware limited liability company.

"Indenture" means the Trust Indenture, dated as of [_____] 1, 2025, between CCCFA and the Trustee, as amended, restated, supplemented or otherwise modified from time to time.

"Initial Assignment Agreement" with respect to SDCP, the initial assignment agreement or agreements specified in the Power Supply Contract.

"Joint Powers Agreement" means the Joint Powers Agreement by and among the Members of CCCFA named therein, including SDCP, providing for the creation, purposes and powers of CCCFA, as the same may be amended or supplemented from time to time in accordance with its terms.

"Power Supply Contract" means the Power Supply Contract, dated [_____], 2025, between CCCFA and SDCP relating to the purchase by SDCP of Energy acquired by CCCFA pursuant to the Prepaid Energy Sales Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Energy Sales Agreement" means the Prepaid Energy Sales Agreement, dated [______], 2025, between CCCFA, as buyer, and the Energy Supplier, as seller, as amended, restated, supplemented or otherwise modified from time to time.

"Prepaid Energy Project" means the issuance of the Bonds by CCCFA pursuant to the Indenture, the acquisition of Energy and related undertakings of CCCFA under the Prepaid Energy Sales Agreement and the Indenture, and the sale to SDCP of such Energy and related undertakings of CCCFA under the Power Supply Contract.

"Public Utilities Code" means the Public Utilities Code of the State of California, as amended.

"Qualifying Use Requirements" has the meaning set forth in Section 1.1 of the Power Supply Contract.

"Re-Pricing Agreement" means the Re-Pricing Agreement, dated as of the date of issuance of the Bonds, by and between CCCFA and Energy Supplier.

"Schedule", "Scheduled" or "Scheduling" means the actions of a Party and/or its designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

"SDCP" means San Diego Community Power, a community choice aggregator as defined in Section 331.1 of the Public Utilities Code.

"Tax Certificate and Agreement" means the Tax Certificate and Agreement executed and delivered by CCCFA in connection with the issuance of the Bonds relating to certain federal income tax compliance requirements relating to the Prepaid Energy Project.

"Transmission Provider(s)" means any entity or entities transmitting or transporting Energy on behalf of a Party to or from an Energy Delivery Point.

- "Trustee" means U.S. Bank Trust Company, National Association, and its successors as Trustee under the Indenture.
- Section 2. <u>Assignment Agreements</u>. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:
 - (a) as of the date of this Agreement, SDCP has entered into the Initial Assignment Agreement specified in the Power Supply Contract with respect to its entire Contract Quantity;
 - (b) subject to the terms of the applicable Assignment Letter Agreement, SDCP may from time to time enter into additional Assignment Agreements with respect to all or a portion of its Contract Quantity; and
 - (c) SDCP shall determine, independent of CCCFA, when and if any Assignment Agreement is entered into or terminated and the underlying agreement and portion of its Contract Quantity to which such Assignment Agreement relates.
- Section 3. <u>Scheduling and Delivery of Assigned Energy</u>. Assigned Energy and any other Assigned Product delivered to CCCFA under the Prepaid Energy Sales Agreement that is attributable to an Assignment Agreement(s) entered into by SDCP shall be attributable to SDCP under the Power Supply Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to SDCP's Assigned Delivery Point and the transfer of other Assigned Product to SDCP, or (b) any accounting for under-deliveries or over-deliveries or other record-keeping requirements with respect to any Assigned Energy and other Assigned Product, all of which shall be the sole responsibility of SDCP pursuant to the related Assignment Agreement(s).
- Section 4. Qualified Use; Remarketing of Base Energy. As provided in the Power Supply Contract, any portion of SDCP's Contract Quantity that is not delivered as Assigned Energy is required to be delivered as Base Energy and simultaneously remarketed by Energy Supplier pursuant to the Prepaid Energy Sales Agreement. SDCP shall be responsible for accounting for any portion of SDCP's Contract Quantity deemed delivered as Base Energy and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements. SDCP agrees to provide to CCCFA any information reasonably requested by it in order to comply with any reporting or record-keeping requirements related to such deemed deliveries and remarketing of Base Energy, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Prepaid Energy Sales Agreement, the Indenture or the Tax Certificate and Agreement.
- Section 5. <u>CCCFA Commodity Swap</u>. CCCFA shall not take any action to terminate or designate the early termination of the CCCFA Commodity Swap except in accordance with written instructions of SDCP or unless otherwise required under the terms of the Prepaid Energy Sales Agreement or the Indenture.
- Section 6. <u>Directions, Consents and Waivers</u>. CCCFA may be required from time to time to provide certain directions, consents, or waivers under the terms of the Prepaid Energy Sales Agreement, the Indenture and the Re-pricing Agreement. In the event any such direction, consent or waiver relates solely to the Contract Quantity and/or Power Supply

Contract of SDCP and no event of default has occurred and is continuing with respect to SDCP under the Power Supply Contract, such direction, consent or waiver shall only be provided by CCCFA in accordance with written instructions provided by SDCP.

Section 7. <u>Re-pricing Information</u>. CCCFA shall provide, or cause Energy Supplier to provide, to SDCP such information as is required to be provided by Energy Supplier to CCCFA in accordance the Re-pricing Agreement at such times as are required under the Re-pricing Agreement.

Section 9. <u>Project Administration Fee; Reimbursement and Refund of Operating Expenses.</u>

- (a) Under the Bond Indenture, Operating Expenses (as defined in the Indenture) relating to the Clean Energy Project are to be paid from amounts deposited monthly into the Administrative Fee Fund for each annual period ending on [_____] 1 of each year. CCCFA agrees that amounts allocated on behalf of SDCP annually into the Administrative Fee Fund equal to \$[_____] in the aggregate for each such annual period (the "Project Administration Fee"), shall be allocated to pay such Operating Expenses as the same become due and payable. In the event such allocated amounts available in the Operating Fund are not sufficient to pay such Operating Expenses when due, SDCP agrees to pay such additional amounts for deposit into the Administrative Fee Fund as are necessary to pay such Operating Expenses upon receipt of notice of the amount due from the Trustee or CCCFA.
- (b) As soon as practicable following the end of each annual period referred to in paragraph (a), CCCFA agrees that the amounts received in respect of the Project Administration Fee for such annual period shall be reconciled with the Operating Expenses paid or accrued for such period. In the event that, following each such reconciliation, it is determined that the amounts received in respect of the Project Administration Fee during the applicable annual period exceed Operating Expenses paid or accrued for such period, SDCP will be provided written notice thereof and the amount of such excess will be included in its Annual Refund under the Power Supply Contract.
- Section 10. <u>Notices</u>. Notices and other information to be provided by a Party to any other Party under this Agreement shall be provided in accordance with Article XVI of the Power Supply Contract.
- Section 11. <u>Governing Law</u>. This Agreement and the obligations of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of California.
- Section 12. <u>Counterparts</u>. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

By:
Name: Garth Salisbury
Title: Treasurer/Controller
SAN DIEGO COMMUNITY POWER
By:
Name:
Title:

CALIFORNIA COMMUNITY CHOICE

FINANCING AUTHORITY

EXHIBIT A6

MEMORANDUM OF UNDERSTANDING ("MOU")

Date: June [__], 2025

To: Eric Washington

Chief Financial Officer

San Diego Community Power

ewashington@sdcommunitypower.org

(619) 657-0403

Garth Salisbury

Treasurer – Controller

California Community Choice Financing Authority

gsalisbury@cccfa.org

(707) 535-9779

From: Morgan Stanley & Co. LLC ("Morgan Stanley")

Re: California Community Choice Financing Authority Energy Prepayment Financing on

behalf of San Diego Community Power

Overview

The California Community Choice Financing Authority ("CCCFA" or the "Issuer") seeks to procure a 30-year supply of energy, through the issuance of Clean Energy Project Revenue Bonds (the "Bonds") to be issued by CCCFA. The CCCFA will sell all the Prepaid Energy acquired from this transaction to San Diego Community Power ("SDCP"), the "Project Participant."

Rating Agency Fee and SPO Fee

The rating agency fee and expenses ("Rating Agency Fee") is paid from the proceeds of the Bonds. However, unlike most of the other fees associated with the issuance of the Bonds, payment of the Rating Agency Fee is not contingent upon the issuance of the Bonds.

In the event the Bonds are not issued due to market conditions, and there remains a Rating Agency Fee payable to Moody's Investors Service or S&P Global Ratings (the "Rating Agency"), Morgan Stanley and CCCFA agree to split this Rating Agency Fee on an equal basis. If the Bonds are not issued due to the CCCFA or the Project Participant's unwillingness or inability to proceed, other than due to an inability to achieve a minimum established target discount, the Rating Agency Fee will be their sole responsibility. To the extent CCCFA incurs any Rating Agency Fee if the bonds are not issued, the Project Participant agrees that it will be liable for such Rating Agency Fee and make direct payment to the Rating Agency therefor.

The Project Participant has or plans to engage Kestrel to provide a green bond second party opinion (the "SPO"). In the event the SPO is obtained and the Bonds are not issued (unless the Bonds are not issued due to the CCCFA or the Project Participant's unwillingness or inability to proceed, other than due to an inability to achieve a minimum established target discount), the fee payable to Kestrel (the "SPO Fee") shall be the responsibility of Morgan Stanley, and in such

Memorandum of Understanding June [__], 2025 Page 2

event, to the extent the SPO Fee was already paid by the Project Participant or by CCCFA, Morgan Stanley agrees to reimburse the Project Participant or CCCFA, as appropriate. To the extent CCCFA incurs any SPO Fee if the bonds are not issued as a result of the Project Participant's unwillingness or inability to proceed, other than due to an inability to achieve a minimum established target discount, the Project Participant agrees that it will be liable for such SPO Fee and make direct payment to Kestrel therefor, or to CCCFA if the SPO Fee was already paid by CCCFA.

Morgan Stanley shall have no responsibility for any fees or expenses incurred by CCCFA or the Project Participant, or their agents, employees, advisors or counsel, in connection with the issuance of the Bonds and the purchase of the Prepaid Energy, other than the Rating Agency Fee and SPO Fee as described in this MOU and as further described in the Bond Purchase Agreement (as defined herein).

Miscellaneous

CCCFA and Project Participant each acknowledge and agree that: (i) the transaction contemplated by this MOU is, in each case, an arm's length, commercial transaction between the CCCFA and Morgan Stanley (in its role as "Underwriter" and/or the "Energy Supplier", as applicable) in which the Underwriter and the Energy Supplier are each acting solely as a principal and not acting as a municipal advisor, financial advisor or fiduciary to CCCFA or the Project Participant; and (ii) CCCFA and the Project Participant will consult their own legal, accounting, tax, financial and other advisors, as applicable, to the extent each has deemed appropriate.

CCCFA acknowledges and agrees that Morgan Stanley is not making a commitment to extend credit, make a loan or otherwise fund the Bonds beyond the obligations contained in a mutually satisfactory bond purchase agreement (the "Bond Purchase Agreement"). CCCFA acknowledges that the services provided under this MOU involve professional judgment on Morgan Stanley's part and that the results cannot be, and are not, guaranteed.

Nothing contained herein shall preclude the Underwriter from carrying on its customary and usual business activities. The Underwriter specifically reserves the right, but is not obligated, to bid for and maintain secondary markets on any of CCCFA's outstanding bonds subject to appropriate information barriers. Services provided by the Underwriter in connection with this MOU shall not limit the Underwriter from providing services for CCCFA or the Project Participant in conjunction with other services requested by CCCFA or the Project Participant except as limited by rule of law or regulation.

In connection with the services agreed to herein, it is understood that the Underwriter will render professional services as an independent contractor. Neither the Underwriter nor any of its agents or employees shall be deemed an employee of CCCFA or the Project Participant for any purpose.

Except as described in this paragraph, this MOU is intended to be, and shall be construed only as, a non-binding MOU, intent on summarizing and evidencing discussions between CCCFA, the Project Participant, and Morgan Stanley, as of the date hereof. Except as described below, any legally binding obligation of the parties with respect to the transaction described herein shall exist only upon the execution and delivery of definitive agreements related thereto, into which this MOU

June [Page 3], 2025
to execute herein. transaction disapprotection the foregoing to execute the foregoing to execute the foregoing the	prior discussions shall merge. It is expressly understood that this MOU is not a contract rute any definitive agreements or to otherwise consummate the transactions described. The parties will cooperate in negotiating definitive agreements providing for the ions contemplated by this MOU, but each party reserves the right of final approval or oval, for any reason, of the documentation relating to such agreements. Notwithstanding going, the provisions above under the headings "Rating Agency Fee and SPO Fee" shall no upon the parties.
Sincerel	y,
	raunfelder, Executive Director AN STANLEY & CO. LLC
ACCEP.	TED AND AGREED:
SAN DIE	EGO COMMUNITY POWER
By: Name: Title: Date:	Eric Washington Chief Financial Officer June [], 2025
CALIFO	RNIA COMMUNITY CHOICE FINANCING AUTHORITY
By:	
Name:	Garth Salisbury
Title:	Treasurer – Controller

Memorandum of Understanding

Title: Date:

June [__], 2025

EXHIBIT B

Additional Project Documents

(see attached)

7 642 R2025-07

APPENDIX A

SAN DIEGO COMMUNITY POWER

Introduction

San Diego Community Power ("SDCP") is a joint powers authority organized and existing under the Joint Exercise of Powers Act (constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time) (the "Joint Powers Act"), as a "community choice aggregator" ("CCA") as defined in Section 331.1 of the Public Utilities Code of the State of California, as amended (the "Public Utilities Code"). For a general description of "community choice aggregators" in California, see the section "COMMUNITY CHOICE AGGREGATORS" in this Official Statement.

Formation, History, and Purpose of SDCP

General. SDCP was created on October 1, 2019, under the name "San Diego Regional Community Choice Energy Authority" as a CCA in California under a Joint Powers Agreement, as amended, by and among the cities participating in SDCP and named therein (the "JPA").

San Diego Community Power was established to provide electricity services at competitive rates to residents and businesses within the municipal boundaries of its member public agencies. Pursuant to its JPA, SDCP focuses on delivering a cleaner energy portfolio and achieving energy consumption reduction goals and the following key priorities:

- **Promotion of Renewable and Distributed Energy Resources**: SDCP prioritizes the use and development of local, cost-effective, renewable, and distributed energy sources, supporting local power generation and storage initiatives. Currently, SDCP procures clean energy from solar, wind, geothermal, large-hydro, and biomass sources.
- Exclusion of Coal and Avoidance of Nuclear Contracts: SDCP seeks to exclude coal and avoid entering into nuclear contracts as part of its overall procurement strategy.
- Economic and Workforce Development: SDCP aims to benefit the region economically by supporting workforce programs and development initiatives, such as working closely and collaboratively with local and regional developers and unions. This helps promote long-term electric rate stability and energy reliability for residents and businesses, by, for example, prioritizing local long-term power purchase agreements that lock in renewable energy supply, allowing SDCP to build its power supply portfolio while also providing power supply cost certainty.
- Community Ownership and Energy Reliability: SDCP promotes personal and community ownership of renewable generation and energy storage resources, in order to foster a sustainable and energy-independent future.

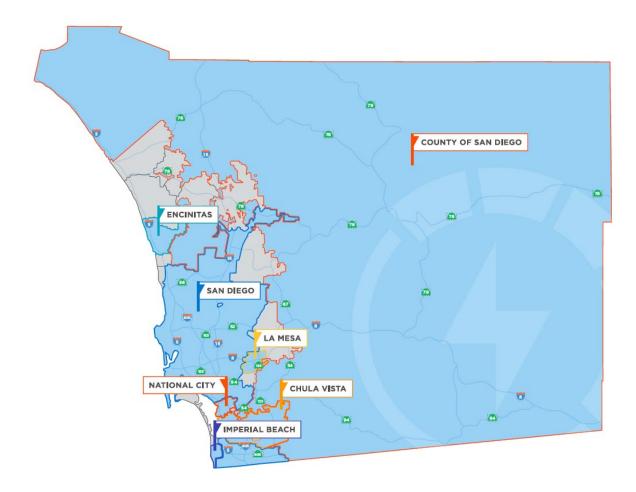
The parties to SDCP's JPA consist of local governments whose governing bodies elect to join SDCP. Under the Public Utilities Code, when new parties join SDCP, all electricity customers in their jurisdiction, except those served under California's Direct Access Program, automatically become SDCP's customers for electric generation, provided customers are allowed to "opt-out."

Commencement of Service and Expansion. SDCP began operations in March 2021 by serving approximately 600 municipal accounts. SDCP enrolled approximately 72,000 municipal and business customers in June 2021. SDCP enrolled approximately 700,000 residential customer accounts throughout 2022 across the city limits of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach. SDCP enrolled approximately 180,000 residential and non-residential customer accounts in National City and Unincorporated areas of San Diego County in 2023. As of April 21, 2025, SDCP was serving 956,724 active accounts with approximately 7,700,000 MWh of annual retail sales.

Service Area

SDCP currently serves seven jurisdictions in the County of San Diego. These jurisdictions include six cities (including San Diego, Chula Vista, Encinitas, La Mesa, Imperial Beach, and National City) and the unincorporated communities of the County of San Diego. SDCP is responsible for acquiring electric power for its service area.

Service Area Map. The service area of SDCP is shown in blue on the map below:



Governance and Management

Board of Directors. SDCP is governed by a seven-member board of directors (the "Board of Directors"), with a board member from each of the seven jurisdictions in the County of San Diego. SDCP's Board of Directors has the rights and powers to set rates for the services SDCP furnishes, incur indebtedness, and issue bonds or other obligations. SDCP's local government structure ensures public transparency. The Board of Directors meets monthly to discuss matters related to the operation of SDCP. All meetings are open to the public, and public comments are encouraged.

Management.

Karin Burns, **Chief Executive Officer**. As Chief Executive Officer of SDCP, Karin Burns leads the 2nd largest community choice aggregator in California with a team of mission-driven professionals providing affordable, clean electricity to approximately 956,700 customer accounts in San Diego County. In this capacity, she oversees a budget in excess of \$1.0 billion, ensures sufficient and reliable clean power procurement, and develops and executes the organization's strategic plan in collaboration with the Board and staff.

Before becoming CEO, Karin most recently served as Vice President of Corporate Development and Regional Vice President of the Pacific Region at Franklin Energy, a national provider of energy efficiency, demand response, electrification, and grid optimization solutions. Before Franklin Energy acquired its assets, Karin served as Chief Executive Officer of Build It Green, where she oversaw a team of 40+ personnel, managed a diverse set of programs across energy efficiency, workforce development, low-income solar and energy efficiency direct installation, healthy homes and reach codes for utilities and local governments.

Previously, Karin served as Executive Director of the nonprofit Code REDD, an environmental company she built into a globally recognized brand. She spearheaded strategic planning and operations, sourced funding from USAID and the McArthur Foundation, and built the successful Stand for Trees campaign.

Before leading high-growth organizations, Karin was a Managing Director at Ambata Capital, where she managed investment and advisory projects in electric vehicles, sustainable agriculture, green buildings, and clean energy. She was previously a Vice President at Gulf Capital, where she sourced, conducted due diligence, and invested in alternative energy, new media, and energy services companies across the Gulf Cooperation Council. She has served on several boards and advisory boards of non-profits, early-stage companies and investment funds from the U.S. to Asia. She began her M&A and corporate finance career at JPMorgan Chase in Hong Kong. Karin earned a Fulbright Scholarship to India, speaks multiple languages, and spent several years overseas in emerging markets from Brazil to China. She has earned Certificates in Energy Innovation and Innovation & Entrepreneurship from Stanford School of Engineering, an M.P.A. in international development from Harvard University, an M.B.A. in finance with distinction from Edinburgh Business School, and a B.A. with Honors from Duke University.

Dr. Eric Washington, Chief Financial Officer. Dr. Eric Washington manages SDCP's annual operating budget, capital investment plan, investment portfolio, and risk management functions. He helps SDCP balance decarbonization goals with the mandate of affordable clean energy at competitive rates. Eric led the development of strategies for SDCP that strengthened the organization's net asset position and cash flow. He was also critical in growing SDCP's net revenue from \$15 million to over \$1 billion in two years. Among his many contributions to SDCP, Eric spearheaded credit facility negotiations, which increased SDCP's credit access from \$35 million to \$150 million.

At various points in his career, Eric has managed the administration and compliance of a \$350 million nonprofit finance program, managed a \$158 million real estate loan portfolio, including construction finance to developers and acquisition finance to real estate investors, and built and managed a diverse team of professionals who provided corporate fiscal analyses, compliance monitoring, and finance reporting in support of several loan officers at various production offices.

Before his role at SDCP, Eric served as a military leader in the U.S. Navy for 26 years, fostering collaboration among diverse teams to meet organizational objectives. Eric also has 25 years of experience in corporate banking and finance. He has served as a vice president, senior credit manager, senior portfolio manager, and senior relationship manager at several regional banking institutions (including California Bank & Trust and Torrey Pines Bank). Eric received his Doctor of Education (Ed.D.) from San Diego State University, M.B.A. from Webster University, and a Bachelor of Science from Southern Illinois University, Carbondale.

Jack Clark, Chief Operating Officer. Jack Clark oversees the day-to-day financial and operational management of SDCP. He works closely with the CEO and CFO to operationalize and execute the strategy and vision for SDCP. Jack has over twenty years of experience overseeing energy, environmental, and cultural programming directed at developing solutions to climate change. Jack has overseen large-scale clean energy market transformation initiatives that help stabilize the relationship between people and the environment.

Before his role at SDCP, Jack was Vice President of Partnerships for commercial vehicle electrification infrastructure at Ideanomics. He was also Senior Director of Customer Programs at Clean Power Alliance of Southern California, California's largest community choice aggregator. Before his time at Clean Power Alliance, Jack was Vice President of Sustainable Energy Use at DNV GL.

Before that, Jack was the Deputy Director of the Energy & Sustainability Division at the City of San Diego, where he was responsible for implementing the City's comprehensive energy strategy, working with staff, other City departments, and community members to incorporate a broad range of energy efficiency, clean, renewable generation, and environmental quality issues into City operations and community programming. He oversaw the city operations of energy use of over 3500 accounts, billing, rates, Municipal Energy Plan, community energy and sustainability programs, compliance with the City Climate Action Plan, and Community Choice Aggregation feasibility analysis on San Diego's goal of reaching 100% Renewable Electricity by 2035.

Prior to his role with the City of San Diego, Jack was the Director of Programs at the Center for Sustainable Energy, where he led the organization's growth from a regional to a national non-profit focusing on strategy, development, and execution of renewable energy, energy efficiency, clean transportation, distributed generation, and advanced clean energy market transformation initiatives. Jack received a Master of Administration in Sustainable Planning and a Bachelor of Science in Anthropology and Environmental Sciences, both from Northern Arizona University.

Veera Tyagi, General Counsel. Veera Tyagi serves as the General Counsel for SDCP. In this capacity, Veera is responsible for ensuring compliance with general governance laws, regulatory requirements, and overseeing all contracting. Veera brings nearly twenty years of legal experience, primarily as in-house counsel for regulatory agencies, to SDCP. In that capacity, Veera handled various matters, including advising and ensuring compliance with the California Environmental Quality Act, the Federal and State Clean Air Acts, and other environmental laws, and in litigating actions in both federal and state courts that are brought under those laws. Veera also has extensive experience advising on general governmental law issues, including the Public Records Act, the Brown Act, and contract laws. Veera's background is a Bachelor's in Environmental Earth Systems Science from Queen's University, and a Juris Doctorate, Cum Laude from the University of La Verne College of Law. Veera is a member of the State Bar of California.

Chief Commercial Officer (Vacant). SDCP is currently evaluating candidates for the role of Chief Commercial Officer with the position expected to be fulfilled by Q4 2025.

Customers

General. SDCP currently provides energy to approximately 956,700 municipal, residential, commercial, and industrial accounts in its service area. SDCP's current customer load mix is approximately 41% residential, 37% medium and large commercial/industrial, 19% small commercial, and 3% agricultural and lighting-based.

Customer Energy Choices. As part of its ongoing efforts to provide clean energy at the greatest value for its customers, SDCP offers four service plans: PowerBase, PowerOn, Power100, and Power100 Green+. PowerBase is SDCP's most affordable service plan and is currently 45% renewable and currently priced with an approximately 5.0% discount under San Diego Gas & Electric (SDG&E) rates. PowerOn is 54% renewable and currently priced approximately 3.0% below SDG&E rates. Power100 and Power100 Green+ are 100% renewable, carbon-free, and the latter is Green-e® certified. PowerOn is SDCP's default electricity service offering. Most customers within SDCP's service territory are automatically enrolled in PowerOn, with the exception of the City of Encinitas, whereby per City Council decision, customers within its city limits are automatically enrolled in SDCP's Power100 service, which costs \$0.01/kWh more than PowerOn.

Customers can choose to opt- up to the Power100 and Power100 Green+ options and purchase 100% renewable and carbon-free electricity at a slight premium. These options enable SDCP's customers to take a more significant step towards reducing their carbon footprint. Power100 Green+ provides 100% renewable, carbon-free, and Green-e® certified energy for businesses seeking LEED certification or requiring Green-e® certification to meet their corporate

social responsibility goals. Power100 Green+ costs \$0.02 per kWh more than the standard PowerOn service level. Power100 Green+ allows customers to meet their organization's reliability standards. Residents and businesses that do not require specific certification can still obtain 100% renewable and carbon-free power through Power100.

In 2025, the average SDCP residential customer is projected to use 341 kWh per month such that PowerOn will cost the average residential customer \$1 per month above PowerBase. Compared to SDG&E's rates, PowerOn is expected to cost approximately \$1.50 per month less for a typical residential customer. Compared to SDG&E's rates, Power100 is expected to cost about \$2 per month extra for a typical residential customer.

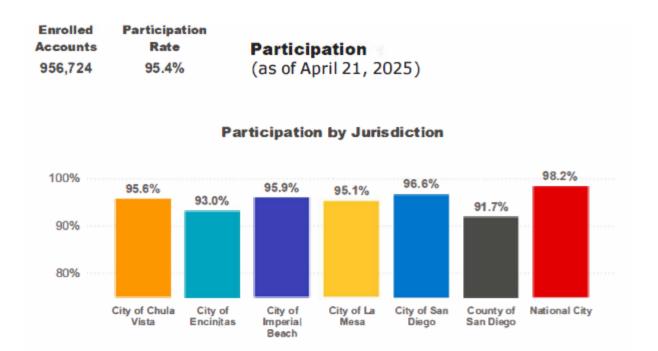
Customer Enrollment. Most customers within SDCP's service territory are automatically enrolled in PowerOn, except for the City of Encinitas, wherein the City Council voted to automatically enroll customers within its city limits in SDCP's Power100 service. Once enrolled, customers may opt up to Power100 or Power100 Green+ service, opt down to PowerBase service, or opt out of SDCP's service.

New Customers. FY 2023-24 was SDCP's first full year of operations, with its seven-member jurisdictions reaching full enrollment. There are no near-term plans for expansion.

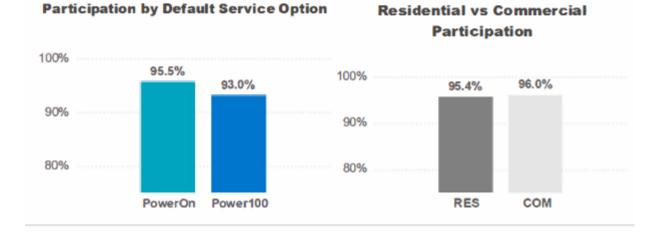
Customer Election to Opt-out of Service. Customers have the right to opt out of SDCP service at any time and will not be charged any fees by SDCP if they opt out or cancel electric services. Customers who opt out before starting SDCP service or within the first 60 days of SDCP service may return to SDCP service at any time. Customers who opt out after the first 60 days of service with SDCP will be prohibited by SDG&E from returning to SDCP for one year and will be charged a one-time customer re-entry fee by SDG&E and will also be required to choose one of two options: an immediate return to SDG&E service, or a 6-month return to SDG&E service.

Cumulative Opt-Out Rate and Customer Retention. As of April 21, 2025, SDCP is serving a cumulative total count of 956,724 active accounts for a total participation rate of 95.4%. Customers with newly established accounts or who have moved into a new service address within any of SDCP's 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 SDCP electric generation service.

The following graphic illustrates SDCP's opt-out rate and customer retention data through April 21, 2025, reflected as a percentage of participation rates 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 Rates

General. SDCP electric generation rates are managed to provide cleaner electricity at competitive rates. SDCP's Board of Directors determines rates and SDCP's rates are not regulated by the California Public Utilities Commission (the "CPUC"). Any rate changes will be adopted at duly noticed public meetings of the SDCP Board of Directors. Under the terms of the Clean Energy Purchase Contract, SDCP covenants that it will establish, maintain, and set rates and charges to provide revenues sufficient to enable it to pay all amounts payable from the revenues of its operations and to keep any reserves as required by SDCP's reserve policies. SDCP further covenants pursuant to the terms of the Clean Energy Purchase Contract that it will not grant any lien or security interest in, or otherwise pledge or encumber revenues if the effect of such lien, pledge or other encumbrance would result in such lien, pledge or encumbrance having priority over the obligations of SDCP under the Clean Energy Purchase Contract.

Determination of Rates for Energy. A customer's cost of electric service is determined by SDCP's charges for energy and SDG&E charges for transmission, distribution, and other non-by-passable charges. Changes to SDG&E or SDCP rates will impact cost comparisons between SDCP and SDG&E. SDG&E charges SDCP customers a monthly Power Charge Indifference Adjustment, which can vary annually based upon several market factors, including benchmarks for regional energy costs, resource adequacy, the year in which the community joined SDCP and other considerations, as well as a Franchise Fee Surcharge. SDCP has already accounted for these additional charges when calculating its commodity rates. Financial assistance programs like CARE (California Alternative Rates for Energy), FERA (Federal Electric Rate Assistance), and Medical Baseline Allowance remain the same for SDCP and SDG&E customers.

Current and Historical Rate Information. SDCP rates are designed to cover the costs of energy, resource adequacy, and operating, fund customer programs, and meet SDCP's reserve and liquidity goals, as described in its Reserve Policy.

On January 18, 2024, the Board of Directors approved rates for SDCP that included:

- A 17.7% year-over-year average decrease, from 2023 to 2024, in SDCP electricity generation rates across all customer classes.
- A 23.2% year-over-year average decrease, from 2023 to 2024, in SDCP electricity generation winter rates and a 12.3% year-over-year average decrease in summer rates across all customer classes.
- Rates that support SDCP to maintain its current reserve levels and to allow it to work toward a 180-day cash-on-hand reserve target, with the goal of providing financial stability and support a credit rating.

Subsequently, on May 30, 2024, the Board of Directors approved the new PowerBase product offering that was effective July 1, 2024, which provided:

- A 2.5% discount for July through December 2024, compared to SDGE's current rates as of March 1, 2024.
- A pathway for customers to return to SDCP's standard service, PowerOn, or opt-up to Power100 more easily than if they opted out of SDCP service entirely.

- Support for SDCP's mission to provide an affordable option that is cleaner than the competition.
- For 100% renewable energy by 2035 or sooner through customer retention, especially for price-sensitive customers.

On May 30, 2024, the Board of Directors approved the Power100 Green+ product offering, a stand-alone, 100% renewable, carbon-free energy service that is Green-e® certified. Power100 Green+ is priced as a \$0.02/kWh adder to the PowerOn service and allows SDCP customers to earn LEED Tier 2 or 3 points in the renewable energy category. Currently, Power100 Green+ is only available to commercial and industrial customers.

Effective February 1, 2025, SDCP implemented rate changes resulting in the following comparisons for most SDCP customers, though exact comparisons may vary by rate schedule and customer usage:

- SDCP PowerOn is set at a \sim 3% discount to SDG&E's rates on a total bill basis.
- SDCP PowerBase is set at a \sim 5% discount to SDG&E's rates on a total bill basis.

SDCP's Power100 and Power100 Green-e Certified services will maintain premiums of \$0.01/kWh and \$0.02/kWh, respectively.

California Renewable Portfolio Standards and Other Regulations

General. Community choice aggregators such as SDCP are "load-serving entities" ("LSEs") and, as such, are required to comply with California's Renewable Portfolio Standard, Resource Adequacy requirements, and Power Source Disclosure requirements described below.

Renewable Portfolio Standard. California's Renewable Portfolio Standard ("RPS") requires LSEs to supply their retail sales with certain minimum quantities of eligible renewable energy. Senate Bill 100 directs all LSEs to procure 60% of their portfolios from RPS-eligible resources by 2030 and 100% of their retail sales from zero-carbon resources (or eligible renewable resources) by 2045. Based on the most recent Power Content Label filed with the California Energy Commission, in 2023, SDCP met 58.8% of its total retail sales with eligible RPS resources, which was above the 2023 RPS percentage target of 41.3%. SDCP has exceeded the annual RPS regulatory minimum requirements each year since its inception.

Resource Adequacy. Resource Adequacy ("RA"), a California program jointly administered by the CPUC, the California Energy Commission ("CEC") and the California Independent System Operator ("CAISO"), directs LSEs to secure forward capacity and offer it into the CAISO's Day-Ahead and Real-Time markets to ensure that there will be enough supply at suitable locations and with sufficient ramping capability to meet load. The RA program is comprised of three products: System RA, Local RA, and Flexible RA. Local RA obligations have been assigned to a Central Procurement Entity as of 2023.

Integrated Resource Planning. Integrated Resource Planning ("IRP") requires LSEs to forecast their customer load and develop a plan to serve such load in alignment with their own vision and values and in accordance with regulatory requirements. In October 2015, California

codified this LSE responsibility with the passage of SB 350, which requires the CPUC to establish and oversee an IRP process to assist with meeting the state's aggressive GHG targets (40% below 1990 levels by 2030). The IRP process, which is used in many states across the US, generally produces 10- to 20-year plans that map out both the supply-side and demand-side resources required for meeting customer load. Given the complexity of the grid and the time required to plan and build generating facilities, IRPs are critical for ensuring safe, reliable and clean power in a cost-effective manner. In addition to addressing the long-term planning horizon typical of an IRP process, the IRP process has been used in recent years to direct procurement of new capacity to meet near- and mid-term reliability and clean energy needs per CPUC Decision ("D.") 19-11-016, D. 21-06-035 and D. 23-02-040. Pursuant to the procurement orders in these CPUC Decisions, LSEs are required to procure "Incremental System Capacity," which is RA capacity from nonemitting, storage, and/or renewable resources that are in addition to the resources identified on a baseline list of existing, on-line and operating resources. SDCP has a strong track record of meeting its RA obligations, falling short only during periods of extreme resource scarcity. SDCP expects to meet its future RA obligations through its Energy Risk Management Policy to the extent that supply is available in the bilateral markets

Power Source Disclosure. California law requires LSEs to disclose the types of power resources used to supply retail sales. This mandate, known as the Power Source Disclosure Program ("PSDP"), is a consumer information program managed by the CEC. A key output of the PSDP is the Power Content Label ("PCL"). The PCL is an LSE-specific document that shows the breakdown of power resource types for each of the LSE's energy products used to serve retail load and a breakdown of resource types for the overall California grid. The PCL is distributed to customers each year.

Energy Demand

Long-Term Load Forecast. SDCP's long-term load forecast is a projection of the electricity that SDCP's customers will consume. SDCP's long-term load forecast considers the number and types of customers that SDCP expects to serve, historical electricity use patterns, temperature, and other weather conditions, as well as trends in energy efficiency, behind-themeter, rooftop solar and electric vehicle adoption, appliance electrification, and other factors.

The table below shows SDCP's long-term load forecast for 2025-2034 based on SDCP's 2023 RPS Compliance Report filed with the CPUC on January 25, 2024.

Table 1: SDCP's 2025-2034 Load Forecast (MWh)

Year	Load Forecast
2025	8,094,390
2026	8,239,804
2027	8,386,117
2028	8,428,047
2029	8,470,187
2030	8,512,538
2031	8,555,101
2032	8,597,877
2033	8,640,866
2034	8,684,070

Sources of Energy

General. In its procurement of energy supplies, SDCP prioritizes using and developing local renewable resources, stimulating local job creation through various programs and development, promoting personal and community ownership of distributed renewable resources, and promoting long-term electric rate stability and energy reliability for residents and businesses.

Energy Purchases. During the ordinary course of business, SDCP purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers, generation credits, load, and other charges stemming from SDCP's participation in the CAISO's centralized market.

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements ("PPAs") are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with a specific revenue stream against which they can finance upfront capital requirements, such that each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while providing cost certainty so that SDCP can develop its pro forma financial model. Moreover, the California RPS, modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years. Finally, in D.21-06-025, the CPUC required each 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". These requirements have been augmented and extended into 2026 and 2027 via CPUC's D.23-02-040.

Over the past 18 months, SDCP staff released four requests for proposals ("RFPs") for eligible Renewable Energy resources, including an RFP for Stand Alone Storage projects and an RFP for clean firm energy, in pursuit of long-term contracts for renewable energy. SDCP evaluated other contracting opportunities to meet SDCP's procurement goals. The SDCP Board, through April 2025, has approved contracts for over 1,670 MW of renewable generation and over 1,960 MW of storage capacity. SDCP staff continues to negotiate with several other developers for

additional renewable energy resources expected to be online between 2025 and 2029. Under CAISO's revisions to their cluster study process for interconnecting future projects, SDCP staff issued an RFP in August 2024 for CAISO Cluster 15 projects, which will serve as a source of renewable and storage projects that SDCP is most interested in getting studied by the CAISO. SDCP staff and the Energy Contracts Working Group (the "ECWG") evaluate all RFP submissions before entering into negotiations with selected participants. Assuming that SDCP staff and shortlisted developer(s) can agree to mutually agreeable contracts consistent with terms authorized by the ECWG, SDCP staff then review the draft terms with the SDCP Board for approval and authorization for the CEO to execute the relevant documents.

SDCP also has an open request for information regarding local projects ("RFP"). The RFI has yielded eight board-approved contracts for local generation and storage facilities in the last twelve months. SDCP also released a request for offers ("RFO") for distributed renewable energy resources ("DERs"), which focuses on a broad range of distribution-level renewable projects within San Diego County. The RFO has yielded two board approved contracts for ~25 MW of capacity.

Energy Load and Supply Risk Management. Through SDCP's Energy Risk Management Policy, SDCP measures and updates its risks using various tools that model programmatic financial projections, market exposure, risk metrics, and short-term budget updates. The following items are measured, monitored, and reported:

- Mark-to-Market Valuation marking to market determines the current value of contracted energy supply.
- Exposure Reporting calculates the notional dollar risk exposure and value at risk of open portfolio positions at current market prices.
- Open Position Monitoring— calculates/monitors open positions for all energy and capacity products monthly. If energy open positions for the month following the then current month (prompt month) exceed 10% of the load, SDCP will solicit market energy to close open positions and make a commercial decision to close the position.
- Counterparty Credit Exposure calculates the notional and mark-to-market exposure to each SDCP counterparty by deal and in the aggregate. Counterparty exposure reporting includes contingent collateral posting risks arising from changes in market prices and other factors.
- Reserve Requirement Targets no less than once per year, SDCP staff monitors SDCP's financial reserves to ensure that they meet the targeted thresholds.

SDCP manages market price risk using its planning models, which define forecasted load, energy under contract, and SDCP's open positions across various energy product types, including renewable energy (Portfolio Content Category I, II, and III), carbon-free energy, and system power relative to SDCP's procurement targets.

Generally, SDCP manages its exposure to energy suppliers by exhibiting a preference for counterparties with investment-grade credit ratings as determined by Moody's or S&P Global Ratings and using security requirements in the form of cash or letters of credit. SDCP measures its mark-to-market counterparty credit exposure in a way consistent with industry best practices.

SDCP manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery and acquiring energy from a geographically and technologically diverse portfolio of generating assets (with a range of generation profiles generally complementary to how SDCP's customers use electric power). Due to known production variability and supply uncertainty related to renewable and other carbon-free energy products, SDCP includes planning margins in procuring such products to ensure that related targets/mandates are achieved.

SDCP manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators. These coordinators independently or jointly provide the systems and data necessary to forecast and schedule load using good utility practice. Load variability is also considered when establishing appropriate planning margins for renewable and carbon-free energy sources.

SDCP manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions, such as the California Community Choice Association. SDCP also regularly participates in regulatory rulemaking proceedings and legislative affairs to protect its interests.

Procurement. All contracting for energy and energy-related products for SDCP, including but not limited to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage, are overseen by SDCP's Power Services department. All contracts are further reviewed and approved by SDCP's CEO and General Counsel. SDCP procures energy and RA in a way that is consistent with its Energy Risk Management Policy. Procurement is conducted through market-based transactions for products, including Fixed Price Energy, Portfolio Content Category 1 Renewable Energy, Portfolio Content Category 2 Renewable Energy, Carbon-Free Energy, and RA Capacity, as well as through longer-term PPAs entered into pursuant to statutory requirements or voluntary long-term resource acquisition decisions made independently by SDCP under its Integrated Resource Plan or other Board or Director-approved strategies.

Short-term procurement is conducted through participation in the CAISO and bilateral markets. SDCP may use various methods to procure long-term contracts, including competitive solicitations, bilaterally negotiated agreements, or regulatory proceedings, with oversight, including shortlist approvals or procurement recommendations, provided by the ECWG of the Board. Specific long-term procurement (e.g., contract terms longer than three years) is subject to Board approval.

Long-term Contracts. To date, SDCP has contracted for ~1,670 MW of nameplate capacity for renewable energy generation and 1,960 MW of nameplate capacity for energy storage projects, identified in Table 2 below, with expected commercial operation dates between 2024 and 2029.

Table 2: Long Term Contracts

Developer/ Project	Guaranteed Commercial Operation Date	Nameplate	Туре
Ormat / Pomona 2	Online	10 MW	Storage (2-hour)
Arevon / Vikings Energy Farm	Online	136.8 MW-AC Generating Facility and	Solar + Storage
		145.5 MW-AC / 582 MWh Storage Facility	
Pattern / Duran Mesa	Online	50 MW	Wind
Intersect / Oberon II	Online	75 MW	Solar
Ormat / Arrowleaf Solar and Storage	4/15/25	42 MW-AC Generating Facility and 35 MW-AC / 140 MWh Storage Facility	Solar + Storage
NextEra / Yellow Pine	Solar: 6/1/27 Storage: 6/1/27	35 MW-AC Generating Facility and 35 MW-AC / 140 MWh Storage Facility	Solar + Storage
SBE / Athos	1/1/26	200 MW	Storage
Aypa / Vidal	12/1/26	160 MW (solar) 160 MW (storage)	Solar + Storage
Arevon / Avocet	4/15/26	200 MW	Storage
MRP / Border	6/1/26	52 MW	Storage (1-hour)
MRP / Enterprise	6/1/26	52 MW	Storage (1-hour)
Wellhead / CVEC2	6/1/26	49.7 MW	Storage
Baywa / JVR Energy Park	10/31/26	90 MW-AC solar photovoltaic Generation Facility combined with a 70 MW-AC / 280 MWh-AC DC- coupled battery energy storage facility	Solar + Storage
Pattern / SunZia	3/31/27	150 MW	Wind
NextEra / Desert Sands	6/1/27	60 MW	Long Duration Storage
SBE / Pelicans Jaw	9/1/26	440 MW (solar) 238.5 MW (storage)	Solar + Storage
Nobel Solar / Purple Sage	6/1/28	400 MW (solar) 400 MW (storage)	Solar + Storage
Aypa / Euismod	6/1/28	200 MW	Storage

Information Technology, Data Analytics and Cyber Security

SDCP's Information Technology ("IT") and Data Analytics department is comprised of professionals who handle all aspects of information technology management, cloud infrastructure, and cybersecurity. This department is building a secure data platform that will enable and empower SDCP staff to develop full-scale in-house data management, data engineering, data science, and analytics capabilities. SDCP's IT and Data Analytics Team focus on developing core operational competencies such as an Energy Trade & Risk Management application or Distributed Energy Resource Management platform to deliver efficiencies, simplifications, and cost savings for SDCP customers.

This department also oversees and is accountable for developing additional IT policies and standards, including responsible Artificial Intelligence and cybersecurity, identifying risk areas, and helping all personnel comply with policies and standards. All SDCP staff are responsible for reporting any noncompliance to management. SDCP makes information technology accessible only to authorized employees or designated vendors as needed, and only for authorized agency purposes.

SDCP's IT and Data Analytics department has begun a holistic cybersecurity program leveraging the NIST 800 framework and ISO 27001 standards. SDCP's current and new cybersecurity standards work to minimize threats and exposure to its assets and information. SDCP additionally holds cybersecurity insurance coverage.

Financial Information

Revenues from Energy Sales and Operating Expenses. SDCP's operating revenues are from selling electricity to commercial and residential customers throughout its territory. SDCP reports its revenue net of uncollectible accounts. In alignment with SDCP's reserve policy and strategic goals, SDCP set rates in 2023,2024 and 2025 sufficient to grow revenue and net income to reach its 180-day cash-on-hand goal.

Other Sources of Revenue. In 2023, SDCP began receiving grant revenue from the California Public Utilities Commission Disadvantaged Communities-Green Tariff and Community Solar Green Tariff programs, which enable residential customers in disadvantaged communities who may be unable to install solar on their roof to benefit from a local solar project and receive a 20% bill discount. This funding originates from California Greenhouse Gas Auction Proceeds and Public Purpose Program funds.

In 2024, SDCP was also awarded \$710,000 in grant funding from the California Department of Food and Agriculture to support its provision of technical assistance and refrigeration units to stock healthy food at stores in low income or low food-access areas throughout its service territory.

In January 2025, SDCP accepted, appropriated and developed plans to expend \$124.27 million of funds from the CPUC to administer and implement energy efficiency programs focused on underserved and hard-to-reach residents, businesses, and public agencies in the region. Funds will be expended through the FY2025-29 capital investment plan.

SDCP additionally derives revenue from investment income. As SDCP's operating reserves have grown, its investment income has also grown in lockstep as SDCP invests its reserves in interest-bearing accounts consistent with SDCP's Investment Policy approved by the SDCP Board on June 27, 2024.

Financial Statements. For financial information related to SDCP, see the annual audited financial statements of SDCP for the fiscal years that ended June 30, 2024 and June 30, 2023, which are attached to this Official Statement as Appendix B.

Financial Reserves. SDCP maintains financial reserves, pursuant to the Financial Reserve Policy adopted by the Board of Directors, to be able to (a) meet SDCP's strategic objectives; (b) secure, maintain, and improve a standalone investment grade credit rating; (c) secure favorable terms with vendors, including power producers; (d) satisfy working capital requirements; (e) adhere to contractual covenants; (f) provide funds to cover unanticipated expenditures; and (g) support rate stability.

Operating Reserve. SDCP maintains a reserve goal to secure 180 days of cash-on-hand held as unrestricted cash. Unrestricted cash equals total cash less cash held in accounts that are restricted from use (e.g., as collateral or by covenant). The contribution to operating reserves is determined through SDCP's annual budget process as defined in the agency's Budget Policy and SDCP's rate-setting process as defined in the agency's Rate Development Policy. To the extent that SDCP can meet operational expenses and maintain competitive rates, it will establish rates and adopt budgets to build and maintain its operating reserves at or above the 180-day cash-on-hand target level. As of March 31, 2025, its unrestricted net position totaled \$401 million.

Risk Management. SDCP maintains a comprehensive risk management framework to identify and mitigate credit, liquidity, market, operational, regulatory, and other risks associated with participation in the California energy market. The framework employs credit risk strategies, including a preference for transacting with investment-grade counterparties, establishing credit limits, and securing collateral when necessary. SDCP utilizes hedging strategies, netting arrangements, and liquidity monitoring to address market risks. Internal controls and compliance mechanisms are in place to manage operational and regulatory risks, ensuring adherence to legal and market regulations. Risk monitoring and oversight are continuously performed through frequent reporting, with critical risks communicated promptly to stakeholders. This integrated approach enables SDCP to maintain a balanced risk profile while adapting to evolving market conditions.



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

TO: Board of Directors

FROM: Kenny Key, Director Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Amended and Restated Energy Storage Service Agreement

with Yellow Pine Solar III, LLC

DATE: June 26, 2025

RECOMMENDATION:

Approve the proposed Amended and Restated Renewable Energy Storage Service Agreement with Yellow Pine Solar III, LLC to move the capacity between project sites, reduce the fixed capacity price, 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 contracts of at least 10 years in duration are integral components of its energy supply portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that Community Power signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term contracts lock in energy and capacity 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.

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 and storage facilities that will achieve commercial operation during 2023 through 2026. Further, Decision 23-02-040 allowed LSEs to contract for long-lead time resources, including long duration storage, with commercial operations out into 2028 to meet its resource adequacy requirements.

The proposed Amended and Restated Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 60 MW/480 MWh, 8-hour battery energy storage facility (Yellow Pine BESS) with Yellow Pine Solar III, LLC, a

subsidiary of NextEra Energy Resources Development, LLC (NextEra). The original ESSA originated from an offer Community Power received in May 2023 via its 2023 Request for Offers for Standalone Storage. The Board approved the ESSA with Desert Sands Energy Storage II, LLC at the October 2023 board meeting.

After execution, the project was subject to notice about delays in critical network deliverability upgrades required by CAISO. These delays pushed the expected commercial operation date to the 2032-2034 timeline. Due to this delay, the project was deemed unviable. Community Power worked with NextEra to move the volumes to a different project site. The parties mutually agreed on terms to move forward with the project.

ANALYSIS AND DISCUSSION:

Staff negotiated the attached full toll ESSA for the purchase of capacity, energy arbitrage and ancillary services from the Yellow Pine BESS, which is a standalone battery storage project to be developed in Clark County, Nevada by NextEra.

The Yellow Pine BESS project is part of a larger planned standalone storage installation. The ESSA also provides for a Guaranteed Commercial Operate date of June 1, 2027, which will provide sufficient buffer to help ensure the project meets the commercial operation date requirements under CPUC Decision 23-02-040.

Below is additional information regarding NextEra and the draft ESSA.

Background on NextEra:

- NextEra has over 33 years of experience with energy infrastructure development, predominantly renewable energy resources, in California
- NextEra has developed over 4 GW in California across more than 30 projects
- Notable recent projects from NextEra include:
 - Desert Sunlight, 230 MW storage, 2022
 - Arlington, 364 MW solar + 242 MW storage, 2022/2023
 - Desert Peak, 400 MW standalone storage, 2023
 - North Central Valley, 132 MW standalone storage, 2023
 - Resurgence Solar, 138 MW solar + 115 MW storage, 2023

Contract Overview – Yellow Pine Solar III, LLC

- Project: 60 MW/480 MWh (8-hour) lithium-ion battery energy system
- Project location: Clark County, Nevada
- Guaranteed commercial operation date: June 1, 2027
- Contract term: 20 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity
- 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 guaranteed efficiency rates once the project is operational.

Amendment Scope:

- Move the capacity from the Desert Sands project site to the Yellow Pine site
- Reduce fixed capacity price
- Adjust language to accommodate slice of day resource adequacy requirements

Community Benefits:

- NextEra is committed to a \$250,000 contribution to a community benefits fund that is to be established to directly benefit stakeholders in Community Power's service area.
- The project will provide 11 construction jobs and 1 permanent job.
- The project will use union labor. NextEra's primary engineering and procurement contractor will execute a project labor agreement for the project.
- NextEra provides sole sponsorship of developing solar curriculum and research at University of Nevada Las Vegas, including mentoring the annual senior design project focused on solar energy systems.
- NextEra hosts a Renewable Energy Training (RET) simulation lab at University of Nevada Las Vegas and College of Southern Nevada.
- NextEra provides presentations at local high schools in Southern Nevada that highlight the benefits of renewable energy and growing career opportunities within the state.
- NextEra established an internship program that leads to career opportunities at NextEra solar and storage sites.
- NextEra has offered Clark County Public Schools to apply for its \$50,000 STEM Classroom Makeover Grant.
- NextEra contributes back-to-school supplies in Clark County Public Schools.
- NextEra contributes to the Three Square Food Bank in Clark County.

COMMITTEE REVIEW:

On June 3, 2025, the Energy Contracts Working Group (ECWG) approved key ESSA terms to move forward with the execution of this ESSA.

FISCAL IMPACT:

The competitive capacity pricing of the ESSA is confidential, but the long-term purchase of capacity, energy arbitration, and ancillary services will provide Community Power with significant value and cost certainty over the term of this ESSA.

ATTACHMENTS:

A: Amended and Restated Energy Storage Service Agreement with Yellow Pine Solar III, LLC (redacted version for commercially sensitive information)

ITEM 16 ATTACHMENT A

AMENDED AND RESTATED ENERGY STORAGE SERVICE AGREEMENT (60MW - 8hr. BESS)

COVER SHEET

Seller: Yellow Pine Solar III, LLC ("Seller")

Buyer: San Diego Community Power, a California joint powers authority ("Buyer")

<u>Description of Facility</u>: A 60 MW/480 MWh battery energy storage facility, located in Clark County in the State of Nevada, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Procurement of BESS Equipment	11/1/2026
Obtain Discretionary Federal and State Permits	1/1/2027
Guaranteed Construction Start Date	1/1/2027
Guaranteed Commercial Operation Date	6/1/2027
RA Guarantee Date	6/1/2028

Delivery Term: Twenty (20) Contract Years

Guaranteed Capacity: 60 MWAC at eight (8) hours of continuous discharge

Dedicated Interconnection Capacity: 60 MW_{AC}

<u>Guaranteed Seasonal Availability</u>: A Seasonal Availability, calculated in accordance with <u>Exhibit P</u> to this Agreement, in a percentage amount no less than the percentages set forth in the following table for the corresponding Contract Year and Seasonal Period; provided, however that, to the extent any Contract Year includes two different Seasonal Periods, a weighted average Guaranteed Seasonal Availability shall be applied for such Contract Year:

Contract Year	Guaranteed Seasonal Availability Summer Season (May through October)	Guaranteed Seasonal Availability Winter Season (November through April)
1		
2		
3 – 20		

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
Ī	
2 – 20	

<u>Minimum Efficiency Rate</u>: for all Contract Years during the Delivery Term

Contract Price:

Contract Year	Contract Price
1 - 20	



Product:

- □ Discharging Energy
- ☑ Installed Capacity and Effective Capacity

□ Capacity Attributes	
Scheduling Coordinator : Buyer or Buyer's agent	
Security Amount:	
Development Security:	
Performance Security:	

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AMENDED AND RESTATED ENERGY STORAGE SERVICE AGREEMENT (60MW - 8hr. BESS)

This Amended and Restated Energy Storage Service Agreement (60MW - 8hr. BESS) ("Agreement") is entered into as of June , 2025 (the "Execution Date"), effective as of October 27, 2023 (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Buyer and Desert Sands Energy Storage II, LLC ("Desert Sands II") previously entered into that certain Energy Storage Agreement dated as of October 27, 2023 (the "Prior ESA"), pursuant to which Desert Sands II agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Prior ESA, certain product as set forth in the Prior ESA;

WHEREAS, Desert Sands II has assigned and transferred all of its right, title, duties, obligations and interests in, to and under the Prior ESA to Seller pursuant to Section 14.3 of the Prior ESA:

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product; and

WHEREAS, the Parties desire to amend and restate in its entirely the Prior ESA in accordance with the terms and conditions set forth in this Agreement.

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**

Contract Definitions. The following terms, when used herein with initial 1.1 capitalization, shall have the meanings set forth below:

"AC" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.7(c).

"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 Transfer" and "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, direct or indirect 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. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an "Affiliate" for purposes of this Agreement, and with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such as a "yield co") controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., XPLR Infrastructure, LP (f/k/a NextEra Energy Partners, LP) ("NEP"), "), XPLR Infrastructure Operating Partners, LP (f/k/a NextEra Energy Operating Partners, LP) ("NEOP"), and NextEra Energy Capital Holdings, Inc. ("NEECH"), and their respective direct or indirect subsidiaries.

"Agreement" has the meaning set forth in the Preamble and includes the Cover Sheet and all Exhibits hereto, and any schedules and written supplements hereto.

"Alternative Dispatches" has the meaning set forth in Section 4.6(b).

"Ancillary Services" means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff, provided, for avoidance of doubt, the Ancillary Services do not include black start.

"Automated Dispatches" has the meaning set forth in Section 4.6(b).

"Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.

"<u>Automatic Generation Control</u>" or "<u>AGC</u>" has the meaning set forth in the CAISO Tariff.

"Availability Adjustment" has the meaning set forth in Exhibit C.

"Availability Notice" has the meaning set forth in Section 4.10(b).

"Availability Standards" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

"<u>Available Capacity</u>" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

"Bankrupt" or "Bankruptcy" 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.

"<u>Battery Charging Factor</u>" means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first ten (10) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

"<u>Battery Discharging Factor</u>" means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first eight (8) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

"<u>BESS Equipment</u>" means batteries, battery modules, onboard sensors, control components, inverters, sub-inverters, transformers, or any of their components.

"<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. local time for the Party sending a Notice, or payment, or performing a specified action.

"Buyer" has the meaning set forth on the Cover Sheet.

"<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, metering scheme, 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 Charging Energy and Discharging Energy delivered to or from the Delivery Point.

"CAISO Certification" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services (to the extent possible given that the Facility may not be deliverable on

[&]quot;Buyer Default" means an Event of Default of Buyer.

[&]quot;Buyer Dispatched Test" has the meaning in Section 4.4(a)(ii).

[&]quot;Buyer's Indemnified Parties" has the meaning set forth in Section 16.1(a).

a Full Capacity Deliverability Status basis at such time), PMAX, and PMIN associated with such storage units.

"CAISO Charges Invoice" has the meaning set forth in Exhibit D.

- "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 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 Tariff</u>" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.
 - "Capacity Damages" has the meaning set forth in Section 5 of Exhibit B.
- "<u>Capacity Test</u>" or "<u>CT</u>" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to Exhibit O.
- "<u>CEQA</u>" means the California Environmental Quality Act, as amended or supplemented from time to time.
- "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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"Charging Energy" means the Energy delivered to the Facility pursuant to a Charging Notice, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy shall be used solely to charge the Facility.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions.

- "Collateral Assignment Agreement" has the meaning set forth in Section 14.2.
- "Commercial Operation" has the meaning set forth in Section 2 of Exhibit B.
- "Commercial Operation Capacity Test" means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.
- "Commercial Operation Date" or "COD" has the meaning set forth in Section 2 of Exhibit B.
 - "Commercial Operation Delay Damages" means an amount equal to

"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 Facility pursuant to this Agreement.

- "Compliance Actions" has the meaning set forth in Section 3.7(a).
- "Compliance Expenditure Cap" has the meaning set forth in Section 3.7.
- "Confidential Information" has the meaning set forth in Section 18.1.
- "Construction Start" has the meaning set forth in Section 1(a) of Exhibit B.
- "Construction Start Date" has the meaning set forth in Section 1(a) of Exhibit B.
- "Contract Price" has the meaning set forth on the Cover Sheet.
- "Contract Term" has the meaning set forth in Section 2.1(a).
- "Contract Year" means a period of twelve (12) consecutive months starting on the Commercial Operation Date. 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 Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

"Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"<u>COVID-19</u>" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

"CPM Soft Offer Cap" has the meaning set forth in the CAISO Tariff.

"CPUC" means the California Public Utilities Commission, or any successor entity performing similar functions.

"CPUC System RA Penalty Price" means the penalty price (in dollars per kW-month) adopted by the CPUC for a load serving entity's failure to procure up to the system RAR that applies to the RA Shortfall Month.

"Credit Rating" means, with respect to any entity, the publicly available or (subject to the express condition that the Party seeking to use private rating reports has provided to the other Party true and correct copies of the private rating reports of such subject entity) 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 publicly available or (subject to the above parenthetical) private rating then assigned to such entity as an issuer rating by S&P, Fitch or Moody's. If ratings by S&P, Fitch and Moody's are not equivalent, the lower rating shall apply.

"Cure Plan" has the meaning set forth in Section 11.1(b)(iii).

"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 Facility Energy, and/or cease accepting or reduce acceptance of Charging Energy from the CAISO Grid 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 a Transmission System Outage; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"Daily Delay Damages" means an amount equal to

"<u>Damage Payment</u>" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a termination of this Agreement under Section 11.2 occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

"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 Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).

"Delivery Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Delivery Point" means the PNode assigned to the Facility by the CAISO.

"<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 Section 4 of Exhibit B.

"<u>Development Security</u>" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"<u>Discharging Energy</u>" means all Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for Electrical Losses to the Delivery Point.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

"<u>Disclosing Party</u>" has the meaning set forth in Section 18.2.

"<u>Dispatch Notice</u>" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer's SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate, for a specified period of time, and/or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto), in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

"Effective Date" has the meaning set forth on the Preamble.

"Effective Flexible Capacity" or "EFC" has the meaning set forth in the CAISO Tariff.

"<u>Efficiency Rate</u>" means the tested rate calculated pursuant to Sections II.I(2) and III(A) of <u>Exhibit O</u> by dividing Discharging Energy by Charging Energy.

"<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 Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

"Energy" means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

"Event of Default" has the meaning set forth in Section 11.1.

"Excused Hour" has the meaning set forth in Exhibit P.

"Execution Date" has the meaning set forth in the Preamble.

"<u>Facility</u>" means the energy storage facility described on the Cover Sheet and in <u>Exhibit A</u>, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"Facility Energy" means the Discharging Energy.

"<u>Facility Meter</u>" 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 Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Facility Metering Point" means the location(s) of the Facility Meter shown in Exhibit R.

"Facility Rebalancing Dispatch" has the meaning set forth in Section 4.11.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"Flexible RAR" means 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.

"Force Majeure Event" has the meaning set forth in Section 10.1(a).

"<u>Full Capacity Deliverability Status</u>" or "<u>FCDS</u>" has the meaning set forth in the CAISO Tariff.

"Gains" means, with respect to the Non-Defaulting 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 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 include the value of Capacity Attributes.

"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*, "Governmental Authority" shall not in any event include any Party.

"<u>Guaranteed Capacity</u>" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as 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 the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

"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 Capacity with an eight (8)-hour continuous discharge capability at the Delivery Point, having achieved FDCS and performing with operational characteristics equal to those required by the Guaranteed Seasonal Availability and the Guaranteed Efficiency Rate, and as limited by the Operating Restrictions, may be counted toward meeting the RAR 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.

"Guaranteed Seasonal Availability" has the meaning 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 an Investment Grade Credit Rating,

(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. NEECH is approved as a Guarantor.

"<u>Guaranty</u>" 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 or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

"Indemnified Party" shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

"Indemnifying Party" shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

"<u>Initial Synchronization</u>" means the commencement of Trial Operations (as defined in the CAISO Tariff).

"Installed Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point (to the extent such Electrical Losses are not already reflected in the Facility Meter measurements), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

"Insurable Force Majeure Event" means any Force Majeure Event that results in direct, physical loss to the Facility, excluding any Force Majeure Event involving any event or circumstance occurring at any point beyond the Delivery Point.

"Inter-SC Trade" 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 Delivery Term.

"<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"Interconnection Point" has the meaning set forth in Exhibit A.

"Interest Rate" has the meaning set forth in Section 8.2.

"ITC" means tax credit applicable to capital investment in equipment used to produce renewable electric energy from energy resources or store energy under Section 48 or Section 48E of the Internal Revenue Code (as may be amended, supplemented or replaced (in whole or in part) from time to time), measured in US dollars.

"<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>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"<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 (a) providing 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 and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"<u>Letter(s) of Credit</u>" 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

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a form substantially similar to the letter of credit set forth in: (a) <u>Exhibit K</u> or as previously provided by Seller to Buyer under the Prior ESA, if issued on behalf of Seller for the benefit of Buyer,

"<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 Nevada.

"Local Capacity Area Resource" has the meaning set forth in the CAISO Tariff.

"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 with jurisdiction over Buyer. "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.

"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 Capacity Attributes and Tax Credits.

- "Maximum Charging Capacity" means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.
- "<u>Maximum Discharging Capacity</u>" means the highest level at which the Facility may be discharged, expressed in MW and as set forth in <u>Exhibit Q</u>.
- "<u>Milestones</u>" means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.
 - "Minimum Efficiency Rate" has the meaning set forth on the Cover Sheet.
- "Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.
 - "Monthly Forecast" has the meaning set forth in Section 4.10(a).

[&]quot;Master File" has the meaning set forth in the CAISO Tariff.

- "Moody's" means Moody's Investors Service, Inc., or its successor.
- "<u>Must Offer Obligations</u>" means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.
- "<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.
 - "NEECH" has the meaning set forth in the definition of Affiliate.
 - "NEER" means NextEra Energy Resources, LLC.
 - "NEOP" has the meaning set forth in the definition of Affiliate.
 - "<u>NEP</u>" has the meaning set forth in the definition of Affiliate.
- "<u>NERC</u>" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.
 - "Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.
- "<u>Network Upgrades</u>" means Delivery Network Upgrades and Reliability Network Upgrades.



"Non-Defaulting Party" has the meaning set forth in Section 11.2.

- "<u>Notice</u>" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (e-mail).
- "<u>Notification Deadline</u>" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.
 - "Off-Peak Hour" means any hour that is not an On-Peak Hour.
- "<u>On-Peak Hour</u>" means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.
- "<u>Operating Restrictions</u>" means those restrictions, rules, requirements, and procedures set forth in <u>Exhibit Q</u>.
 - "Outage Schedule" has the meaning set forth in Section 4.12(a)(i).
- "Participating Transmission Owner" or "PTO" means an entity that owns, operates and maintains (or designates a third-party to operate or maintain on its behalf) 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" has the meaning set forth in the Preamble.
 - "Party A" has the meaning set forth in Section 8.9.
 - "Party B" has the meaning set forth in Section 8.9.
- "Performance Security" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

"Permitted Transfer" means each of the following transactions:

- (a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that (i) the entity that is the Seller after completion of such transaction is a Permitted Transferee, (ii) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (iii) a whollyowned, indirect subsidiary of Ultimate Parent operates the Facility;
- (b) Any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

- (c) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or
- (d) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) a direct or indirect transfer of all or substantially all of the assets or ownership interests of NEER, NEECH, or Ultimate Parent; (ii) a direct or indirect transfer of all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; (iii) a direct or indirect transfer of all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio;

"Permitted Transferee" means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that has the following:

- (a) A tangible net worth of
- (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.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent, NEER, NEECH, NEOP, and NEP, and their respective direct or indirect subsidiaries.

"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 a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).

"PMAX" means the applicable CAISO-certified maximum operating level of the Facility.

"PMIN" means the applicable CAISO-certified minimum operating level of the Facility.

"PNode" has the meaning set forth in the CAISO Tariff.

"<u>Portfolio</u>" means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

"<u>Portfolio Financing</u>" means any debt or equity financing incurred or entered into by an Affiliate of Seller that is secured only by a Portfolio.

"<u>Portfolio Financing Entity</u>" means any Affiliate of Seller that incurs any debt or equity financing obligations in connection with any Portfolio Financing.

"Prior ESA" has the meaning set forth in the Recitals.

"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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

"Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"RA Compliance Showing" means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) 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 3.5(b).

"RA Guarantee Date" has the meaning set forth on the Cover Sheet.

- "<u>RA Shortfall</u>" has the meaning set forth in Section 3.5(b).
- "RA Shortfall Month" means, for purposes of calculating an RA Deficiency Amount under Section 3.4(a), any Showing Month, commencing with the First Showing Month, during which (i) the (a) lowest amount of Net Qualifying Capacity eligible to be qualified as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month, plus (b) any Replacement RA (if applicable) that was included in the Showing Month for Buyer was less than (ii) the Guaranteed RA Amount for such Showing Month.
 - "Real-Time Market" has the meaning set forth in the CAISO Tariff.
 - "Receiving Party" has the meaning set forth in Section 18.2.
 - "Reliability Network Upgrades" has the meaning set forth in the CAISO Tariff.
 - "Remedial Action Plan" has the meaning in Section 2.4.
- "Replacement RA" means replacement Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer including the same Slice-of-Day (as defined in the Resource Adequacy Rulings), generation profile and related characteristics, any successor criteria applicable to the Facility, and as applicable, Flexible RAR and Local RA unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.
 - "Requested Confidential Information" has the meaning set forth in Section 18.2.
- "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.
- "Resource Adequacy Capacity" or "RA Capacity" has the meaning set forth in the CAISO Tariff.
- "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" shall have the meaning used in Resource Adequacy Rulings.
- "Resource Adequacy Rulings" means any applicable CPUC ruling or decision related to resource adequacy, 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.

- "<u>RETA</u>" means the State of Nevada Renewable Energy Tax Abatement including pursuant to NRS 701A.300-.390, inclusive, and NAC 701A.500- 660, inclusive, as in effect from time-to-time throughout the Contract Term or any successor provision.
- "<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.
- "<u>SCADA Systems</u>" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer's SC.
- "Schedule" has the meaning set forth in the CAISO Tariff, and "Scheduled" and "Scheduling" have a corollary meaning.
- "Scheduled Energy" means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO 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.
 - "Seasonal Availability" has the meaning set forth in Exhibit P.
 - "Seasonal Period" means the Summer Season or the Winter Season.
 - "Security Interest" has the meaning set forth in Section 8.9.
 - "Seller" has the meaning set forth on the Cover Sheet.
 - "Seller's Indemnified Parties" has the meaning set forth in Section 16.1(b).
 - "Seller Initiated Test" has the meaning set forth in Section 4.4(a)(iii).
- "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 Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities), 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 a calendar month of the Delivery Term, commencing with the First Showing Month, that is the subject of a 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 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.

"SQMD Plan" has the meaning set forth in the CAISO Tariff.

"State of Charge" or "SOC" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by eight (8) 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 Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice. Seller is solely responsible for Station Use.

"<u>Stored Energy Level</u>" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"Summer Season" means the months of May through October, inclusive.

"<u>Subsequent Purchaser</u>" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"Supplementary 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 Participating Transmission Owner, 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.

"System RAR" means the 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, but excluding local and flexible Resource Adequacy Requirements. "System RAR" may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

"<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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities, and any other state, and/or local tax benefit, grant or incentive including RETA, and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i). For avoidance of doubt, any Tax Credits belong to Seller.

"<u>Termination Payment</u>" has the meaning set forth in Section 11.3(b).

"<u>Throughput</u>" means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

"<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>Transmission System Outage</u>" means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller's actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

"<u>Ultimate Parent</u>" means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.

"<u>Unplanned Outage</u>" means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

"Winter Season" means the months of November through April, inclusive.

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, shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of such document, agreement or 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 terms "include" and "including" mean "include or including (as applicable) 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 set forth herein ("Contract Term"); provided, 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 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.
- 2.2 <u>Commercial Operation; Conditions Precedent</u>. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide copies of the documents set forth below to Buyer in a timely manner after receipt and 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.
- (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 and Efficiency Rate on the Commercial Operation Date;
- (b) Seller or its Affiliate has executed an Interconnection Agreement with the Participating Transmission Owner, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

- (c) Intentionally omitted;
- (d) 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;
- (e) Seller has obtained CAISO Certification for the Facility other than for Ancillary Services, which shall not be required to achieve the Commercial Operation Date or the start of the Delivery Term;
- (f) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;
- (g) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained 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;
 - (h) Seller or its Affiliate has Site Control;
- (i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8, which may be provided in part by designating the Delivery Security as Performance Security;
- (j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and
- (f) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Intentionally Omitted.**

- 2.4 <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 agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such 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 Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- 2.5 <u>Remedial Action Plan</u>. If Seller misses a Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90)-day period following the 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 (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, and the potential impact of the missed Milestones on achievement of the Commercial Operation Date in relation to the Guaranteed Commercial Operation Date. Delivery of a Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones (when required under this Section 2.5), and 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 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.6 <u>Pre-Commercial Operation Actions</u>. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

- 3.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to and shall purchase the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.
- 3.2 <u>Discharging Energy</u>. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.
- 3.3 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status for the Guaranteed Storage Capacity in the CAISO generator interconnection process. Seller shall use

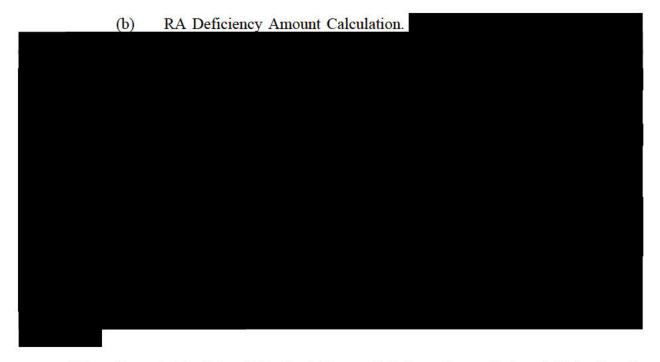
commercially reasonable efforts to achieve the First Showing Month on a Full Capacity Deliverability Status or Interim Capacity Deliverability Status basis in the amount of the Guaranteed Storage Capacity by the RA Guarantee Date. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

- (a) From and after the RA Guarantee Date, and subject to Section 3.7, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
- (b) If the Facility achieves the First Showing Month on an Interim Deliverability Status basis in an amount that is less than the Guaranteed Storage Capacity, for each Showing Month from that First Showing Month to the first Showing Month on a Full Capacity Deliverability Status basis, the Storage Payment shall be calculated in accordance with Exhibit C, Section (a).
- (c) If the RA Guarantee Date occurs prior to the First Showing Month, Seller shall pay damages or provide Replacement RA to Buyer pursuant to Section 3.8 in the RA Deficiency Amount for each Showing Month from the RA Guarantee Date to the First Showing Month.
- (d) From and after the First Showing Month and subject to Section 3.7, Seller shall take 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. Seller shall promptly comply with all reasonable requests for information from the CPUC and all reasonable requests for information from Buyer necessary to demonstrate Buyer's compliance with its RAR obligations with respect to the Facility.
- Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity, adjusted to reflect the Effective Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 **Resource Adequacy Failure**.

(a) <u>RA Deficiency Determination</u>. For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b),

and/or provide Replacement RA, as set forth in Section 3.5(c), as the sole and exclusive remedy for the RA Shortfall Month and the Capacity Attributes that Seller failed to convey to Buyer.



- 3.6 Buyer's Re-Sale of Product. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, resale or remarketing of the Product, or any part of the Product provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.
- 3.7 <u>Compliance Expenditure Cap</u>. If a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at ("Compliance Expenditure Cap").
- (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "<u>Compliance Actions</u>."

- (b) 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.
- (c) 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 or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.
- (d) 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.
- (e) If a change in Laws prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes pursuant to Sections 3.1, 3.3, 3.5, or 3.6, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then, except as otherwise provided or contemplated in this Agreement with respect to how a change in Laws will be addressed, and the definition of Guaranteed RA Amount, Seller shall provide Notice to Buyer of such change in Laws and the consequences for Seller's performance hereunder, the Parties shall enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered consistent with such change in Laws, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, *provided* that if no such agreement is achieved resolution shall be determined in accordance with Article 15.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 <u>Delivery</u>. Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Commercial Operation Date 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 Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Participating Transmission Owner 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 Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and delivery of Discharging Energy at and after the Delivery Point,

including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 <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 (and no greater) than the Dedicated Interconnection Capacity throughout the Delivery Term.

4.3 Seasonal Availability and Efficiency.

- (a) During the Delivery Term, the Facility shall maintain a Seasonal Availability during each Seasonal Period of no less than the Guaranteed Seasonal Availability, which Seasonal Availability shall be calculated in accordance with Exhibit P. If the Seasonal Availability during any Seasonal Period is less than the applicable Guaranteed Seasonal Availability for such Seasonal Period, then Seller shall owe liquidated damages pursuant to Exhibit C, which, except as set forth in Section 11.1(b)(iii) and (iv), shall be Buyer's sole and exclusive remedy in respect of Seller's failure to achieve the Guaranteed Seasonal Availability.
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than the applicable Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with a Capacity Test conducted pursuant to Exhibit O. If the Efficiency Rate during any month is less than the applicable Guaranteed Efficiency Rate, then Seller shall owe liquidated damages pursuant to Exhibit C, which, except as set forth in Section 11.1(b)(v), shall be Buyer's sole and exclusive remedy in respect of Seller's failure to maintain the applicable Guaranteed Efficiency Rate.

4.4 <u>Facility Testing</u>.

- (a) <u>Capacity Tests</u>. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.
- (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any 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 Capacity Test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.
- (ii) Any testing of the Facility requested by Buyer, and all required annual tests pursuant to Section B of the section headed "Capacity Test Notice and Frequency" in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). For any Buyer Dispatched Test, Buyer shall (1) pay for and be responsible for providing

all associated Charging Energy, (2) be liable for all CAISO costs and charged for associated Charging Energy, and (3) be entitled to any CAISO revenues associated with associated Discharging Energy.

- (iii) For any Capacity Tests, or other operational tests initiated by Seller ("<u>Seller Initiated Test</u>"), including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Storage Capacity immediately prior to such Capacity Test is below of the Installed Storage Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall be (A) liable for all CAISO costs and charges for associated Charging Energy, and (B) entitled to any CAISO revenues associated with Discharging Energy.
- (iv) 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 Facility shall be deemed unavailable during any Seller Initiated Test. Any hour or partial hour when a Buyer Dispatched Test occurs shall be deemed an Excused Hour for the purposes of calculating the Seasonal Availability.
- (v) For any Seller Initiated Test, other than Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).
- (vi) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.
- (b) <u>Additional Testing</u>. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

- (b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.
- (c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 Facility Operations.

- (a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
- (b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("Automated Dispatches"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices ("Alternative Dispatches").
- (c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer's request.
 - (d) Seller shall maintain accurate records with respect to all Capacity Tests.
- (e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.
- 4.7 <u>Dispatch Notices</u>. Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer's SC. If Automated Dispatches are not possible for reasons beyond Buyer's control, Alternative Dispatches may be provided pursuant to Section 4.6(b).
- 4.8 <u>Facility Unavailability to Receive Dispatch Notices</u>. To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive

remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Seasonal Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to any circumstances at the high-voltage side of the Delivery Point or beyond that point, or during any Excused Hour.

4.9 Energy Management.

- (a) <u>Charging Generally</u>. Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.
- (b) <u>Charging Notices</u>. Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to compliance with the Operating Restrictions, each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.
- (c) <u>No Unauthorized Charging</u>. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Buyer Initiated Test or a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the CAISO, Participating Transmission Owner, or any Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.
- (d) <u>Discharging Notices</u>. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

- (e) <u>No Unauthorized Discharging</u>. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the CAISO, Participating Transmission Owner, or any Governmental Authority.
- (f) <u>Unauthorized Discharges</u>. If, during the Contract Term, Seller (i) discharges the Facility other than as provided for in the Discharging Notice or (ii) discharges the Facility in violation of Section 4.5(e), then (i) Seller shall be responsible for two (2) times the amount of all Energy costs associated with, and shall hold Buyer harmless from, and reimburse Buyer for two (2) times the amount of all actual losses and costs that Buyer incurs as a result of, such discharging of the Facility, and (ii) Buyer shall be entitled to all of the benefits (including Product) associated with such discharge.
- (g) <u>CAISO Dispatches</u>. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).
- (h) <u>Pre-Commercial Operation Date Period</u>. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.
- (i) <u>Curtailments</u>. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Participating Transmission Owner. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (j) <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 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 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.

4.10 Capacity Availability Notice.

- (a) 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 the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("Monthly Forecast").
- (b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.
- (c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change one (1) MW or more after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.
- 4.11 <u>Facility Rebalancing Dispatch</u>. Seller shall have the right to charge and discharge the Facility during Off-Peak Hours to rebalance the levels of stored energy in the Facility as Seller deems necessary ("<u>Facility Rebalancing Dispatch</u>"); provided that: (i) Seller shall provide at least seventy-five (75) minutes prior notice to Buyer for any Facility Rebalancing Dispatch; (ii) Seller shall restore the Facility at the end of any Facility Rebalancing Dispatch to the level of stored energy (but rebalanced among inverters) as existed prior to the Facility Rebalancing Dispatch; and (iii)

each as a result of any such Facility Rebalancing

Dispatch.

4.12 Outages

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall limit

Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

- (ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); provided, 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 replacement Capacity Attributes as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
- (b) No Planned Outages During Summer Months. Except as scheduled by the Parties under Section 4.12(a)(ii), during the Summer Season of each Contract Year, Seller shall not schedule any non-emergency outage or maintenance that reduces the Available Capacity of the Facility, unless (i) such outage or maintenance is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such outage or maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the Summer Season of each Contract Year, (iii) such outage or maintenance occurs in connection with any Force Majeure Event, (iv) such outage or maintenance is required by Law or by the CAISO Tariff or the tariffs of the Participating Transmission Owner, or (v) the Parties agree to such outage or maintenance in writing.
- (c) <u>Planned Outage Timing</u>. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement (if such periods are available), and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
- (d) <u>Notice of Unplanned Outages</u> Seller shall notify Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.
- (e) <u>Inspection</u>. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day reasonably convenient for Seller and at a reasonable time and Seller shall reasonably cooperate with Buyer

during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) <u>Reports of Outages</u>. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5 TAXES, GOVERNMENTAL COSTS

- 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 (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). 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) or on Charging Energy prior to its delivery to Seller. 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.
- 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*, 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 AND REPAIR 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 sale of Product, and the disposal or recycling of any equipment associated with the Facility, including batteries.
- 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, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in <u>Exhibit N</u> Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.
- 6.3 <u>Shared Facilities</u>. 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 Participating Transmission Owner, 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 the amount of 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 ID(s); and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Participating Transmission Owner 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 in an amount that is higher than Buyer's pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

- 7.1 **Metering**. Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter will 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, then the Facility Meter(s) will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly 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 Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. 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 prior to the Commercial Operation Date, as may also be revised to be consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the Facility 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 Facility 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. 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) web and/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.
- 7.2 <u>Meter Verification</u>. Seller shall test the 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 Facility Meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) 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 Charging Energy, Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; 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.
- Payment. Buyer shall make payment to Seller of Monthly Capacity Payments 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 an annual Interest Rate equal to the prime rate 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 (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 two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable 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 \$10,000.

- 8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.
- 8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within 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 with respect to this Agreement 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 (a) deliver the Development Security to Buyer in an amount equal to the amount set forth for the Development Security on the Cover Sheet within thirty (30) days of the Execution Date. However, the Parties acknowledge and agree that (i) development security in the amount required under this Agreement of five million four hundred dollars (\$5,400,000) was previously provided to Buyer under the Prior ESA and is currently being held by Buyer, and (ii) such

previously provided development security may be applied towards and shall fulfill Seller's obligation to provide the Development Security required under this Agreement, provided that Seller shall provide, and Buyer shall have the right to require, within thirty (30) days of the Execution Date, any conforming changes or amendments to the previously provided development security currently being held by Buyer, including to reflect the new Seller and the new name of this Agreement. 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 (a) Seller's delivery of the Performance Security (unless Seller elects to use the Development Security to meet a portion of the Performance Security), or (b) 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. Notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.

- Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may elect to apply the Development Security toward the Performance Security. 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 Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) 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 (provided, however, that the total amount of any replenishments shall not exceed two (2) times the amount of the original Performance Security), until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller 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. For avoidance of doubt, the limit on Seller's obligation to replenish the Performance Security shall not be construed as a cap on Seller's liabilities under this Agreement.
- 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, each Party ("<u>Party A</u>") hereby grants to the other Party ("<u>Party B</u>") a present and continuing first-priority

security interest ("Security Interest") in, and lien on (and right to net against), and assignment of, as applicable, the Development Security, Performance Security.

to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7, 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 Party B, and Party A agrees to take all action as Party B reasonably requires in order to perfect Party B'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 Party A, an Early Termination Date resulting from an Event of Default caused by Party A, or an occasion provided for in this Agreement where Party B is authorized to retain all or a portion of the Development Security, Performance

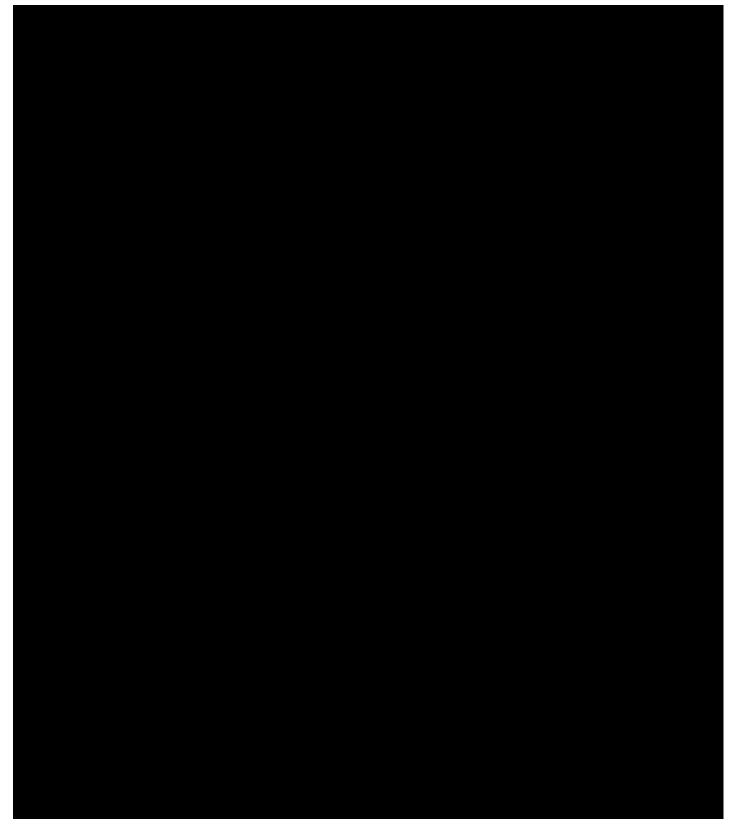
- (a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, as a applicable, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Party B as Development Security, Performance Security, and
- (c) Liquidate all Development Security, Performance Security, then held by or for the benefit of Party B free from any claim or right of any nature whatsoever of Party A, including any equity or right of purchase or redemption by Party A.

Party B shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Party A's obligations under this Agreement (Party A remains liable for any amounts owing to Party B after such application), subject to Party B's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 Provision of Financial Statements.

- (a) From the Effective Date, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred eighty (180) days after the end of each fiscal year; provided, however, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.
- (b) 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's ultimate parent (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, and if applicable, as posted on the website of the Guarantor's ultimate parent or the Securities Exchange







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 in <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 <u>Acceptable Means of Delivering Notice</u>. 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 next Business Day 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 next Business Day delivery carrier, 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; hail; explosion; fire; volcanic eruption; flood; epidemic or pandemic (including COVID-19) and any quarantine related to any such epidemic or pandemic); 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.
- (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 Facility; (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, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility or the Shared Facilities except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors,

their subcontractors, or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event.

- 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 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. 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. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, provided the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. 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. 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, (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, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment as liquidated damages upon exercise of Buyer's default rights pursuant to Section 11.2 (provided that promptly upon Buyer's receipt of the Damage Payment, Buyer shall return to Seller the Development Security to the extent it did not comprise (i.e., was not used as) the Damage Payment), or (d) limit Buyer's right to terminate the Agreement with respect to the Facility pursuant to Section 2 and/or Section 4 of Exhibit B and receive the Damage Payment as liquidated damages, provided that promptly upon Buyer's receipt of the Damage Payment, Buyer shall return to Seller the Development Security to the extent it did not comprise (i.e., was not used as) the Damage Payment.
- 10.3 Notice. Within two (2) weeks of becoming aware of the impact of a 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 claim. Failure to provide timely written Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim as to all periods prior to the delivery of a Notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

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 Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Seasonal Availability that do not trigger the provisions of Section 11.1(b)(iii) & (iv), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in 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)-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;
- (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.
- (vii) failure by such Party to satisfy the collateral requirements pursuant to Section 8.7, Section 8.8,

- (viii) with respect to any outstanding Letter of Credit provided for the benefit of the other Party that is not then required under this Agreement to be canceled or returned, the failure by such Party to provide for the benefit of such other Party either cash or a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or, in the case of the Performance Security required to be provided by Seller, a Guarantor meeting the requirements of this Agreement, in each case, in the amount required hereunder within ten (10) Business Days after such Party 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 Fitch 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) such Party 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.
- (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 that was not discharged by the Facility;
- (ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) 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(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) If, during any four (4) consecutive Seasonal Periods of the Delivery Term, the simple average of the Seasonal Availability (calculated in accordance with Exhibit P but including all Force Majeure Events as available hours) for such Seasonal Periods is not at least and Seller fails to: (x) deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure and the actions that 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 ("Cure Plan") not to exceed one hundred eighty (180) days:
(iv) If, during any two (2) consecutive Seasonal Periods of the Delivery Term, the simple average of the Seasonal Availability (calculated in accordance with
Exhibit P but including all Force Majeure Events as available hours) for such Seasonal Periods is not at least and Seller fails to: (x) deliver to Buyer within thirty (30) days after Notice from Buyer a Cure Plan to cure such failure within one hundred eighty (180) days;
(v) 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

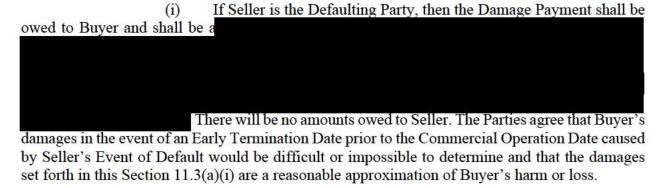
(vi) if, Seller fails to maintain an Effective Capacity equal to at least of the Installed Capacity for more than three-hundred and sixty five

(365) consecutive days

- (vii) 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; or
- (viii) 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.
- 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 and ends the Contract 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, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and
- (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 early termination of this Agreement under this Section 11.2 and the Event of Default related thereto.
- 11.3 <u>Damage Payment; Termination Payment</u>. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.
- (a) <u>Damage Payment Prior to Commercial Operation Date</u>. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).



(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the Settlement Amount plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include 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 Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused

by Buyer's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

- Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a termination of this Agreement under Section 11.2 occurring after the Commercial Operation Date ("Termination Payment") shall be the Settlement Amount plus any and 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 as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include 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 (i) the actual damages that the Non-Defaulting Party would incur in connection with a termination of this Agreement under Section 11.2 would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a termination of this Agreement after the Commercial Operation Date under Section 11.2 and the associated Event of Default.
- 11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), 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.
- 11.5 <u>Disputes With Respect to Termination Payment or Damage Payment</u>. If the 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 <u>Seller Pre-COD Liability Limitations</u>. Notwithstanding anything to the contrary in this Agreement, Seller's total liability prior to the Commercial Operation Date (excluding any Commercial Operation Delay Damages) shall not exceed

- 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 due to Seller'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 following the Early Termination Date due to Seller's Event of Default, 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 with an adjusted schedule, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or the Facility's interest in the land rights or interests in the Site (including the interconnection queue position of the Facility) each for the avoidance of doubt as and to the extent applicable to the Facility, so long as the limitations contained in this Section 11.7 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.7 pursuant to a written agreement approved by Buyer, which approval shall not 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 11.7.
- 11.8 <u>Rights And Remedies Are Cumulative</u>. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, 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.
- 11.9 <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 (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S 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, BY STATUTE, IN TORT OR CONTRACT.
- 12.2 <u>Waiver and Exclusion of Other Damages</u>. 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 TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5(b), 4.3, 4.9(c), 4.9(f), 11.2, 11.3 AND 11.6, AND AS PROVIDED IN EXHIBIT B, and EXHIBIT C, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY 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; COVENANTS

13.1 <u>Seller's Representations and Warranties</u>. As of the Execution 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 or will be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- Seller has the power and authority to enter into and (subject to potential management, board, or board committee approvals as and when required for the applicable performance obligations) perform this Agreement and is not prohibited from entering into this Agreement or discharging and (subject to the foregoing parenthetical) 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 Seller's performance under this Agreement. The execution, delivery and (subject to the foregoing parenthetical) 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. Notwithstanding the foregoing, Seller's failure to obtain the approvals set forth in the parenthetical in the first two sentences above (i) shall not suspend or excuse Seller's failure to perform its obligations under this Agreement, including the obligation of Seller to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, and (ii) shall not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(a) or Section 11.1(b) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.
- (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) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays.
 - 13.2 Buyer's Representations and Warranties. As of the Execution 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 its jurisdiction. 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, 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.
- (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, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, 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 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, (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.
- (f) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- (g) 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 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>Seller's Covenants</u>. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) <u>Compliance with Laws</u>. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.
- (b) Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.
- (c) Seller or its Affiliate shall maintain Site Control throughout the Delivery Term.
- 13.5 **Project Labor.** Seller shall ensure that work performed in connection with construction of the Facility is conducted using one hundred percent (100%) union labor or a community workforce agreement, work site agreement, project labor agreement, collective bargaining agreement, or other similar agreement providing for terms and conditions of employment with applicable labor organization.
- 13.6 <u>Supplier Diversity</u>. Seller acknowledges that Buyer will 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.
- 13.7 <u>Community Benefits</u>. Seller pledges to contribute two hundred fifty thousand dollars (\$250,000) for community benefits initiatives that directly benefit stakeholders in Buyer's service area and/or communities adjacent to the Site. Buyer and Seller shall identify initiatives that are of mutual interest such as housing, education, workforce training, environmental stewardship, and habitat improvement. Seller shall make this payment within sixty (60) days after the Commercial Operation Date.

ARTICLE 14

ASSIGNMENT

- General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may 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, except as specified in Section 14.3. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including reasonable attorneys' fees. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement provided in Section 14.2, to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement; provided, however, 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 provided in this Article 14.
- Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"), which shall be substantially in the form of Exhibit T and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit U ("Estoppel Certificate"). Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall 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 this Agreement.
- 14.3 Permitted Assignments. Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party in accordance with Section 14.2; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. 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 shall not be required if (i) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP, or (ii) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with

respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

- 14.4 **Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.
- Permitted Assignment by Buyer. If a change in Law occurs after the Effective 14.5 Date that allows a tax-exempt load serving entity, including Buyer, to include product purchased under an energy storage agreement with a standalone storage facility, including Product purchased under this Agreement, in a municipal prepayment transaction, then subject to the terms and conditions of this Agreement, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity ("Limited Assignee") that has an Investment Grade Credit Rating of Buyer's right to receive certain Product (which shall not be for retail sale, and which shall not include any right to issue Charging Notices or Dispatch Notices or to dispatch the Facility or any portion of the Product, or any right or obligation to act as the Scheduling Coordinator for the Facility or to offer any portion of the Product into the CAISO markets) and Buyer's obligation to make payments for such Product to the Seller (subject to the foregoing exclusions, "Assigned Product"). The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under the Agreement or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement, and shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement with respect to the Assigned Product. Buyer shall pay Seller for any payments not timely made by Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payment for all amounts due and owing under this Agreement, including the total gross amount due to Seller under each invoice. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified in this Agreement. Subject to the foregoing, Buyer may make such an assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment and the proposed form of limited assignment agreement in form and substance acceptable to Seller and its Lenders (if any), including that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or its Lenders. Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to such limited

assignment, or (2) Seller's performance of any obligation under the assignment agreement, fails to meet any requirements of this Agreement, then Seller shall not be deemed to be in breach of any obligation in this Agreement, including without limitation any representation or warranty herein. Buyer shall reimburse Seller for its out-of-pocket costs and expenses, including reasonable attorneys' fees in excess of \$5,000, incurred in connection with any such assignment, or requested assignment, including in connection with obtaining required consents from its Lenders. Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any Lender in connection with such limited assignment, including providing any requested acknowledgments with respect to any Collateral Assignment Agreement.

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. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.
- 15.2 <u>Judicial Reference</u>. Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be a retired judge and shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.
- 15.3 <u>Dispute Resolution</u>. In the event of any dispute arising under this Agreement, 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 and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity in accordance with this Agreement.
- 15.4 <u>Attorneys' Fees</u>. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

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 third party 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 an 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.
- 16.3 <u>Defense and Settlement</u>. 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**.

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 obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of the amount of primary and excess insurance.
(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than accident. With regard to bodily injury by disease, the will apply to each employee.
(c) <u>Workers Compensation Insurance</u> . Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Nevada Law.
(d) <u>Business Auto Insurance</u> . Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.
(e) <u>Construction All-Risk Insurance</u> . Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, until the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.
(f) Intentionally omitted.
(g) <u>Subcontractor Insurance</u> . Seller shall 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(g).

(h) <u>Property Insurance</u>. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under

standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations.

(i) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. 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; and (iv) information that the recipient independently developed without a violation of this Agreement.
- 18.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party") shall not disclose Confidential Information to a third party (other than the Party's members, employees, lenders or investors, counsel, accountants, directors 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, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. For the avoidance of doubt, the Parties acknowledge and agree that the information contained in Exhibit A is not Confidential Information. 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 18.2 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.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer 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 Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer's Indemnified Parties from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

- 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>Further Permitted Disclosure</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 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 press release.

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 (including the Prior ESA), 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>. Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.
- 19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 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) and/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 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.
- Party by electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.
- 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 <u>No Recourse to Members of Buyer</u>. 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. As set forth in this Agreement, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.11 Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366.

- (a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and at least one of the Parties is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of any security posted by the other Party to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or offset under a forward contract within the meaning of \$8556, 561 of the Bankruptcy Code.
- (b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.
 - (c) Each Party acknowledge and agrees that, for all purposes of this

Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or 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 any other provision of 11 U.S.C. § 101-1532.

19.12 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution 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.

19.13 <u>Further Assurances</u>. Each of the Parties hereto agrees 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 assumption 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. [Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

YELLOW PINE SOLAR III, LLC	SAN DIEGO COMMUNITY POWER
By: Name: Title:	By: Name: Title:
	Approved as to form:
	By:
	Name:
	Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Yellow Pine Solar III (for clarification, the Facility will comprise only a portion of the entire Yellow Pine Solar III Complex)

Site includes all or some of the following APNs: 17100001004, 17100001010, 17100001011, 17100001012, 17100001009, 16800002025, 16800002024, 17100001007, 17100001008, 17100001005, 17100001006, 17100001004, 17100001005 *

County: Clark County, Nevada

Zip Code: 89061

Latitude and Longitude: 36.067942°, -115.780358°

Facility Description: A standalone battery energy storage facility located in Clark County, in the State of Nevada. The Facility is a portion of a larger complex. Seller may install additional inverter capacity to account for production and delivery losses.

Interconnection Point: The Facility shall interconnect at the PNode.

Delivery Point: The Delivery Point for the Facility shall be the PNode for the Facility.

Facility Meter: See Exhibit R.

PNode: If not available at the Execution Date, the PNode shall be established prior to the Commercial Operation Date. Seller shall promptly notify Buyer following establishment of the PNode.

Participating Transmission Owner: GridLiance

Additional Information: None

* The APNs identified above are sufficient for Seller to build the Facility. Seller may add additional APNs without the consent of Buyer.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. <u>Construction of the Facility</u>.

- (a) "Construction Start" will occur upon Seller's execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees that includes the physical movement of soil at the Site. 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 Daily Delay Damages pursuant to Section 1(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.
- In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by electing to pay Daily Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed of extensions by such payment of Daily Delay Damages. a total of 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 (including any previous extensions) Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. For the avoidance of doubt, Seller has no obligation to pay any Daily Delay Damages in connection with any failure or delay in achieving the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.
- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when 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>"). The "<u>Commercial Operation Date</u>" shall be 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 election to pay Commercial Operation Delay Damages pursuant to Section 2(b) of this <u>Exhibit B</u> and/or a Development Cure Period pursuant to Section 4 of this <u>Exhibit B</u>. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. For the avoidance of doubt, Seller has no

obligation to pay any Commercial Operation Delay Damages in connection with any failure or delay in achieving the Guaranteed Commercial Operation Date.

- In addition to extensions pursuant to a Development Cure Period, 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 of extensions by such payment of Commercial Operation Delay Damages; provided, however, that Seller may apply any unrefunded Daily Delay Damages paid by Seller toward the payment of any Commercial Operation Delay Damages, and shall pay the remainder owed after such credit is applied. 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 may provide Notice and payment to Buyer of the Commercial Operation Delay Damages (less any amounts credited for payment of unrefunded Daily Delay Damages) for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages (including through crediting of unrefunded Daily 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(b) of Exhibit B.
- 3. <u>Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation</u>. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. Extension of the Guaranteed Dates.

- (a) The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of any and all delays (including for events that may have commenced or result from events prior to the Execution Date) 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:
 - (i) a delay caused by one or more Force Majeure Events,
 - (ii) the Interconnection Facilities or Network Upgrades are not complete and ready at least four (4) months prior to the Guaranteed Commercial Operation Date (as in effect before an extension under this Section 4(b)) to enable the Facility to sell Product at the Delivery Point by such Guaranteed

Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller,

(iii) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date; or

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above, which shall not have a limit as applied to Seller) shall not exceed for any reason. Notwithstanding anything to the contrary herein, no extension shall be given under a Development Cure Period if, and to the extent that (A) the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, (B) Seller failed to provide requested documentation as provided below, or (C) Seller failed to provide written notice to Buyer as required for a Force Majeure Event (provided for clarification purposes, if the Force Majeure Event written notice is provided but not timely under Section 10.3, Seller shall be entitled to a Development Cure Period extension but reduced by the number of days that such notice is late), if applicable, or as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.



5. <u>Failure to Reach Guaranteed Capacity</u>. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have after the Commercial Operation Date to install additional capacity such that the Installed Capacity is up to (but not greater than) the Guaranteed Capacity, and Seller shall provide

to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to achieve an Installed Capacity that is 100% of the Guaranteed Capacity by such date, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity, Performance Security, and other applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this **Exhibit C**.

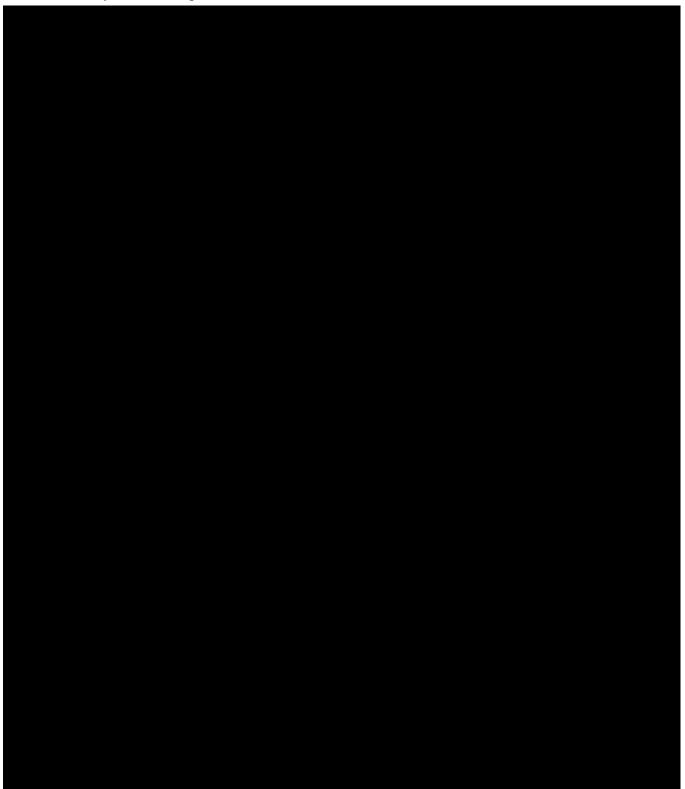




EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- Buyer as Scheduling Coordinator for the Facility. 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 Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization, (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, 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. 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, fifteen-minute market, real time or other CAISO market basis that may develop after the Effective Date, 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 shall 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, or transmission to the personnel designated to receive such information.
- CAISO Costs and Revenues. Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance 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 Delivery Point and Charging Energy delivered to the Delivery Point; provided, however, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) 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), or (ii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. 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 (if such penalties are related to Seller's failure to adhere to its obligations under this Agreement).

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 shall 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 thirty (30) 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 in respect of 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) shall if requested by Seller 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 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.
- (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 reasonably 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 material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 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). Format to be provided by Buyer.
- 15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW 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 f	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

FORM OF DAILY AVAILABILITY NOTICE

	Day:								
Station:			Issued By:	Issued By:					
Unit:				Issued At:					
			::						
	Hour Ending	Available Capacity		Comments					
		(MW)							
	1:00								
	2:00								
	3:00								
	4:00								
	5:00								
	6:00								
	7:00								
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EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (" <u>Certification</u> ") of Commercial Operation is delivered by [licensed professional engineer] (" <u>Engineer</u> ") to San Diego Community Power, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Amended and Restated Energy Storage Service Agreement (60 MW-8hr. BESS) dated (" <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.
As of[DATE], Engineer hereby certifies and represents to Buyer the following:
1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on [DATE] .
6. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on[DATE]
7. The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff on[DATE]
EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this day of, 20
[LICENSED PROFESSIONAL ENGINEER] By: Its:
Date:

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

this certification (" <u>Certification</u> ") of Capacity and Efficiency Rate Test results is delivered by
licensed professional engineer] ("Engineer") to San Diego Community Power, a California joint
owers authority ("Buyer") in accordance with the terms of that certain Amended and Restated
Energy Storage Service Agreement (60 MW-8hr. BESS) dated ("Agreement") by
nd between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not
therwise defined herein shall have the respective meanings assigned to such terms in the
Agreement.
hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or
Effective] Capacity of MW AC to the Delivery Point at eight (8) hours of continuous discharge,
nd (ii) an Efficiency Rate of%, all in accordance with the testing procedures, requirements and
protocols set forth in Section 4.4 and Exhibit O.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
his day of, 20
[LICENSED PROFESSIONAL ENGINEER]
By:
Its:
Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

(" <u>Selle</u> accordate Agreer Buyer.	rtification of Construction Start Date (" <u>Certification</u> ") is delivered by [SELLER ENTITY] <u>r</u> ") to San Diego Community Power, a California joint powers authority (" <u>Buver</u> ") in ance with the terms of that certain Amended and Restated Energy Storage Service ment (60 MW-8hr. BESS) dated (" <u>Agreement</u> ") by and between Seller and All capitalized terms used in this Certification but not otherwise defined herein shall have beective meanings assigned to such terms in the Agreement.
Seller l	nereby 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:
	(such description shall amend the description of the Site in Exhibit A of the Agreement.)
	TNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as day of
[SELL	ER ENTITY]
By:	
Its:	
Date:_	

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 Authority 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 Amended and Restated Energy Storage Service Agreement (60 MW-8hr. BESS) 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]] 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 one hundred twenty (120) 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)

Drawing Certificate	
[Insert Bank Name and Ad-	dress]
Ladies and Gentlemen:	
joint powers authority, PO of the Irrevocable Letter of	thorized representative of San Diego Community Power, a California Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert y order of (the "Applicant"), hereby certifies to the Bank
	eficiary are party to that certain Amended and Restated Energy Storage t (60 MW-8hr. BESS) dated as of, 20 (the
\$ because Agreement) has on	ring a drawing under this Letter of Credit in the amount of U.S. cause a Seller Event of Default (as such term is defined in the occurred or other occasion provided for in the Agreement where orized to draw on the letter of credit has occurred.
OR	
U.S. \$because Applicant in the expiration date	king a drawing under this Letter of Credit in the amount of which equals the full available amount under the Letter of Credit, is required to maintain the Letter of Credit in force and effect beyond of the Letter of Credit but has failed to provide Beneficiary with a of Credit or other acceptable instrument within thirty (30) days prior to be.
•	a duly authorized representative of San Diego Community Power and cute and deliver this Drawing Certificate on behalf of Beneficiary.
•	o make payment of the requested amount to San Diego Community mmediately available funds to the following account:
[Specify account information	on]
San Diego Community Pov	ver
Name and Title of Authoriz	zed 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 Amended and Restated Energy Storage Service Agreement (60 MW-8hr. BESS) (as amended, restated or otherwise modified from time to time, the "ESSA") dated as of [], 20
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the ESSA, as required by Section 8.8 of the ESSA.
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 ESSA.
D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.
<u>Agreement</u>
1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA,(the "Obligations"), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA; provided, that the Guarantor's aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed
Dollars (\$) (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 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 ESSA, Guarantor shall promptly pay such amount as required herein.

Exhibit L - 1

2.

Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this

ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA, or (z) the anniversary of the Effective Date. 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, or
 - (ii) any amendment, modification or other alteration of the ESSA, 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 ESSA 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 ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

<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 ESSA, 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 ESSA, 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 ESSA;
- (iii) subject to Section 10, 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*] 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 which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (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 ESSA. 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
[], a California joint powers authority ("Buyer") in accordance with the terms of that
certain Amended and Restated Energy Storage Service Agreement (60 MW-8hr. BESS) 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 3.5 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		

 $^{^{\}rm 1}\,{\rm To}$ be repeated for each unit if more than one.

By:			
By: Its:			
Date			

[SELLER ENTITY]

EXHIBIT N

NOTICES

YELLOW PINE SOLAR III, LLC ("Seller")	SAN DIEGO COMMUNITY POWER
` '	("Buyer")
All Notices:	All Notices:
Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: 561-691-2866 (Office)	Street: PO Box 12716 City: San Diego, CA 92112 Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: powercontracts@sdcommunitypower.org
Reference Numbers: Duns: [To be provided by Seller prior to the Delivery Term] Federal Tax ID Number: [To be provided by Seller prior to the Delivery Term] Invoices: Attn: Business Management Phone: E-mail: DL-NEXTERA-WEST-INTERNATIONAL-	Reference Numbers: Duns: Federal Tax ID Number: Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
REGION@nexteraenergy.com and NEER-REVENUE-TEAM.SharedMailbox@nexteraenergy.com	
Scheduling: Attn: DA – Christin Neff RT – PMI RT desk Phone: DA - 561-304-6053 RT – 561-625-7100 Facsimile: Email: dl-nepm-dayaheaddesk-wecc@nexteraenergy.com, nepm.realtimedesk@nexteraenergy.com	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

YELLOW PINE SOLAR III, LLC	SAN DIEGO COMMUNITY POWER
("Seller")	("Buyer")
Confirmations:	Confirmations:
Attn: Phone: Email: <u>DL-Confirmations-Juno-PMI@nexteraenergy.com</u> >	Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: Business Management Phone: (561) 694-4725 E-mail: <u>DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com</u>	Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date	Wire Transfer:
BNK: ABA:	
ACCT:	
Defaults:	With additional Notices of an Event of Default to:
Yellow Pine Solar III, LLC 700 Universe Blvd. Juno Beach, FL 33408 Attn: Attn: Emre Ergas and Christine Seal Telephone: (561) 691-2866 & (561) 304- 5447 E-mail: Emre.Ergas@nexteraenergy.com &	Attn: SDCP General Counsel PO Box 12716 San Diego, CA 92112 Email: legal@sdcommunitypower.org
Christine.Seal@nexteraenergy.com With a simultaneous copy provided to:	
With a simultaneous copy provided to: Attn: General Counsel E-mail: NEER-General- Counsel@nexteraenergy.com	

YELLOW PINE SOLAR III, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
Emergency Contact:	Emergency Contact:
Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: 561-694-3636 (Office) Email: DL-NEXTERA-WEST- INTERNATIONAL- REGION@nexteraenergy.com and FPDC- Wind.SharedMailbox@nexteraenergy.com	Attn: Chief Commercial Officer Phone: (619) 657-0422 Email: powercontracts@sdcommunitypower.org

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

- A. <u>Commercial Operation Capacity Test(s)</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).
- B. <u>Subsequent Capacity Tests</u>. Following the Commercial Operation Date, at least 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 Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any 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 Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test 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 Capacity Test is sometimes referred to in this <u>Exhibit O</u> as a "<u>CT</u>". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. <u>Conditions Prior to Testing.</u>
 - (1) <u>EMS Functionality</u>. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data

- with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) <u>Communications</u>. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) <u>Commissioning Checklist</u>. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- A. <u>Test Elements</u>. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this <u>Exhibit O</u>, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this <u>Exhibit O</u>.
 - (1) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed eleven (11) hours of total charging time.
- B. <u>Parameters</u>. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time:
 - (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
- (4) Stored Energy Level (MWh).

C. Intentionally Omitted.

- D. <u>Test Showing</u>. Each CT shall record and report the following datapoints:
 - (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for eleven (11) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT for purposes of calculating the ramp rate (with the parties acknowledging this this value may be effectively instantaenous and unmeasurable with precision);
 - (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT(for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. <u>Test Conditions</u>.

- (1) <u>General</u>. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.
- (2) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters

shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- F. <u>Incomplete Test</u>. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Participating Transmission Owner, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. <u>Test Report</u>. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
 - (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. <u>Supplementary Capacity Test Protocol</u>. No later than sixty (60) days prior to conducting the initial Commercial Operation Capacity Test, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("<u>Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this <u>Exhibit O</u>.
- I. <u>Adjustment to Effective Capacity and Efficiency Rate</u>. The Effective Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
- (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) eleven (11) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) eleven (11) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following one (1) hour rest period, or other period recommended by the battery manufacturer, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%)

- after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

• Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Section III.A(8) above at the Facility Meter divided by eight (8) hours.
- (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
- (3) Record and store the Facility active power response (in seconds).

• System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

• Procedure:

- (1) Record the Facility active power level at the Facility Meter.
- (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
- (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

• Procedure:

- (1) Record the Facility reactive power level at the Facility Meter.
- (2) Command the Facility to follow 19.7 MVAR for ten (10) minutes.
- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

• Procedure:

- (1) Record the Facility reactive power level at the Facility Meter.
- (2) Command the Facility to follow 19.7 MVAR for ten (10) minutes.
- (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

SEASONAL AVAILABILITY CALCULATION

Following the end of each Seasonal Period during the Delivery Term, Seller will calculate the "Seasonal Availability" for such Seasonal Period using the formula set forth below:

[SPDHRS_s - UNAVAILHRS_s]

Seasonal Availability (%) =	
[SPDHRS _s]	
Where:	
s = relevant Seasonal Period "s" in which Seasonal Availability is calculated;	
SPDHRS _s is the total number of hours for the Seasonal Period; <i>provided</i> , for the fill last Seasonal Period, only hours that are part of the Delivery Term are included;	irst and
UNAVAILHRS _s , is the total number of hours, or partial hours, during which the I was unavailable to charge and discharge Energy between the Facility and the D Point and to provide Ancillary Services (provided that notwithstanding anything contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extracility is unable to provide Ancillary Services for any reason not excused und Agreement during any Settlement Interval or Settlement Period that is not oth deemed excused, but the Facility is available to charge and discharge Energy between	elivery to the tent the der this herwise
Facility and the Delivery Point,	
) for any reason other the	
occurrence of any of the following (any hour or partial hour when any one or more	
following occurs is an "Excused Hour"): Force Majeure Event (excluding any In	
Force Majeure Event; provided, however, that Insurable Force Majeure Events shall	
excluded (i.e., all Force Majeure Events shall be included) in determining Se	
Availability for purposes of any Event of Default under this Agreement); curtain	
including Curtailment Orders; Event of Default of Buyer; Buyer Initiated Test;	
Emergency: Transmission System Outage: Planned Outage up to	urs per

If the 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 Facility is available for

Contract Year; unavailability due to compliance with any Operating Restriction; or excused unavailability under Section 4.8. For the avoidance of doubt, hours and partial hours of unavailability that are Excused Hours will not be included in UNAVAILHRS_s for any Seasonal Period. Any event that results in unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour for this calculation. Additionally, if during any hour the Facility is available, but for less than the full amount of the then applicable Contract Capacity, the UNAVAILHRS_s for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available

Contract Capacity.

that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the 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 Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

If the Seasonal Storage Availability during any Season of the Delivery Term is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer liquidated damages in an amount equal to the product of (i) the aggregate monthly Storage Payments for such Season and (ii) one hundred percent (100%) minus the availability factor ("<u>AF</u>") for such Season, calculated as follows (the "<u>Availability Adjustment</u>"):

(I) If the Seasonal Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AF = 100%



EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will 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) will, at a minimum, include the rules, requirements and procedures set forth in this <u>Exhibit Q</u>, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]		
Technology:	Lithium Ion Batteries		
A. Contract Capacity			
Guaranteed Capacity (MW):	60		
B. Total Unit Dispate	B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)		230	
Maximum Stored Energy Leve	l (MWh):	480	
Minimum Stored Energy Level	l (MWh):	0	
Maximum Charging Capacity	(MW):	60	
Maximum Discharging Capaci			
C. Maximum Throug	hput		
Maximum annual average Stat	e of Charge (SOC):		
Maximum Annual Throughput MWh/yr):	t (discharged		
D. Charge and Discha	rge Rates		
Ramp Rate (charge/discharge	MW/min)	120, unless limited by the CAISO	
E. Ancillary Services			
Spinning reserve is included:		Yes	
Non-spinning reserve is include	ed:	Yes	
Regulation up is included:		Yes	
Regulation down is included:		Yes	
Black start is included:			
Voltage support is included:		Yes	

EXHIBIT R

METERING DIAGRAM

To be provided to Buyer at least sixty (60) days prior to the Commercial Operation Date.

EXHIBIT S



Exhibit S - 1

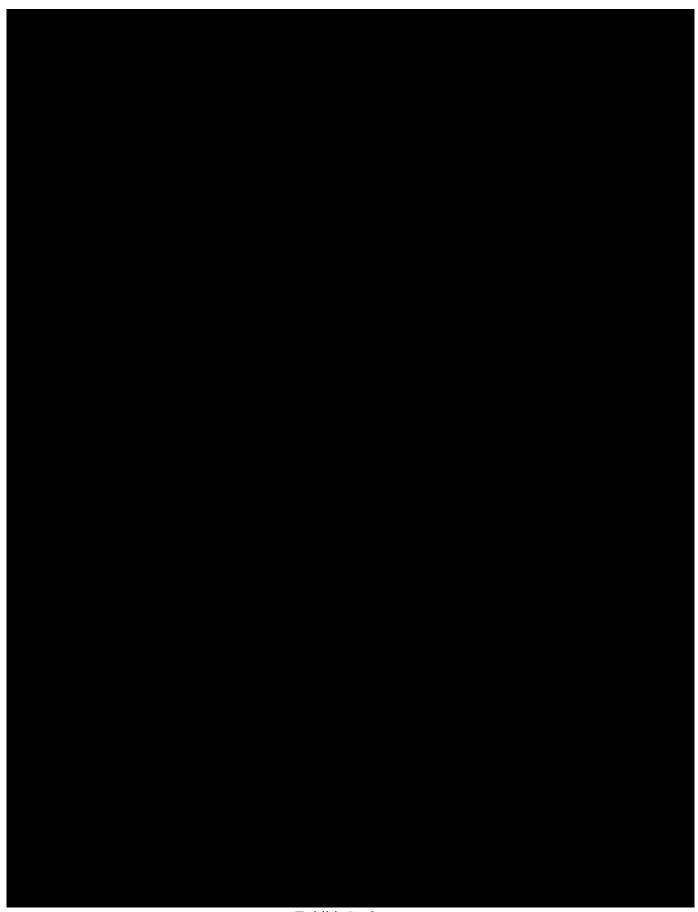


Exhibit S - 2



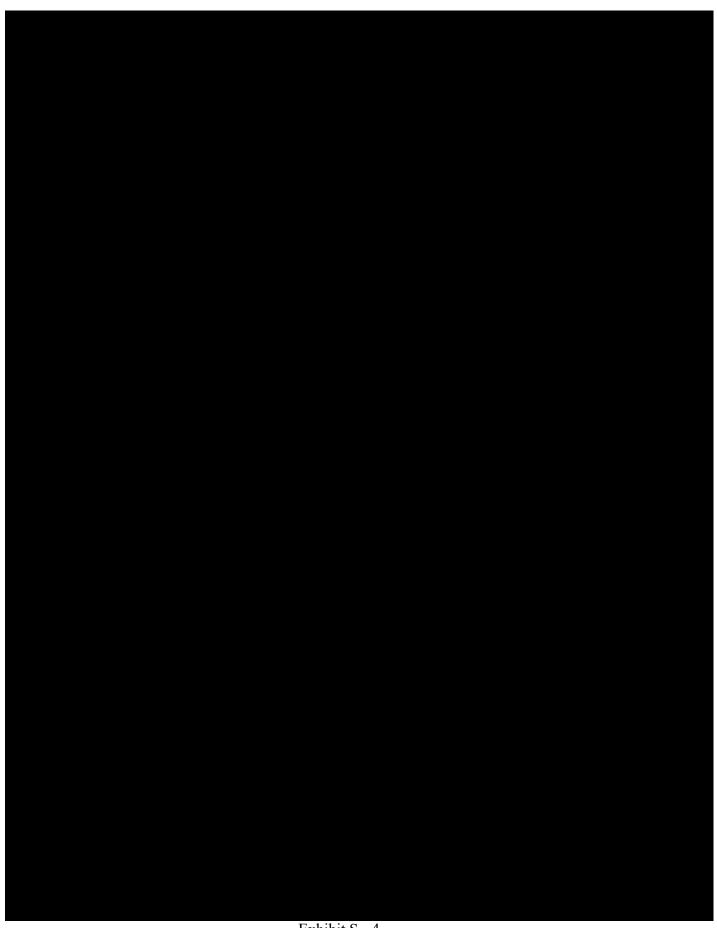


Exhibit S - 4



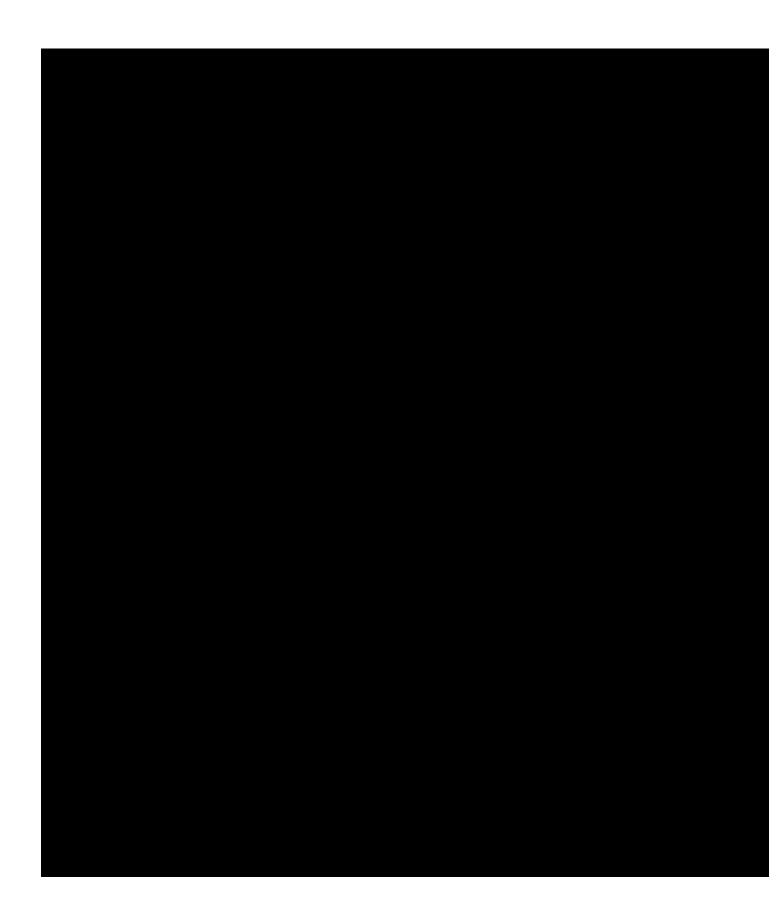




EXHIBIT T

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this "Consent"), dated as of ,
20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of
Contracting Party] organized under the laws of the State of [] (the "Contracting Party"), [], a [] (the "Project Owner"), and [], as collateral agent
[], a [] (the " <u>Project Owner</u> "), and [], as collateral agent
(in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for
various financial institutions named from time to time as Lenders under the Credit Agreement (as
defined below) and any other parties (or any of their agents) who hold any other secured
indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all
such parties collectively, the "Secured Parties").
A. The Project Owner owns, operates and maintains [
(the "Project").
(the <u>Froject</u>).
B. The Contracting Party and the Project Owner have entered into the
agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise
modified from time to time in accordance with the terms thereof and hereof, the "Assigned
Agreement").
C. The Borrower, the Project Owner, the other affiliates of the Borrower as
Guarantors, various financial institutions named therein from time to time as
Lenders,, as the Administrative Agent and Collateral Agent, have entered
into a Credit Agreement, dated as of [](as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities
described therein.
described therein.
D. As security for the payment and performance by the Project Owner of its
obligations under the Credit Agreement and the other Financing Documents (as defined below)
and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its
right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement
to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of
[]between the Project Owner and the Collateral Agent (as amended,
restated, supplemented or otherwise modified from time to time in accordance with the terms
thereof, the "Security Agreement", and, together with the Credit Agreement and any other
financing documents relating to the issuance of the Notes, the "Financing Documents").
E. It is a requirement under the Credit Agreement that the Project Owner cause
E. HEIS A FEGUITEMENT UNDER THE CAFEUL APPEELMENT THAT THE PROJECT OWNER CAUSE

the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. <u>CONSENT TO ASSIGNMENT</u>. THE CONTRACTING PARTY HEREBY ACKNOWLEDGES AND CONSENTS TO THE PLEDGE AND ASSIGNMENT OF ALL RIGHT, TITLE AND INTEREST OF THE PROJECT OWNER IN, TO AND UNDER (BUT NOT ITS OBLIGATIONS, LIABILITIES OR DUTIES WITH RESPECT TO) THE ASSIGNED AGREEMENT BY THE PROJECT OWNER TO THE COLLATERAL AGENT PURSUANT TO THE SECURITY AGREEMENT.

2. <u>REPRESENTATIONS AND WARRANTIES</u>. THE CONTRACTING PARTY REPRESENTS AND WARRANTS AS FOLLOWS:

- (a) <u>No Amendments</u>. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.
- (b) <u>No Previous Assignments</u>. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.
- (c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, the Contracting Party has no knowledge of any event or condition (a "Termination Event") that would entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; <u>provided</u>, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

- (b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)]¹ or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.
- If a Termination Event shall occur [(other than a termination pursuant to Section 11.1(b)(iii), (iv) (v) or (vi) of the Assigned Agreement)]² and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of fifteen $(15)^{\frac{3}{2}}$ days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have such longer period as is required to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.
- (d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.
- 4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S

Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Or longer cure period specified in Assigned Agreement.

DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.

- SUBSTITUTE OWNER. THE CONTRACTING 5. **PARTY** ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS. THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE DESIGNEE, PURCHASER OR ASSIGNEE OF COLLATERAL AGENT WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.
- 6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING

PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

- 7. AMENDMENTS. CONTRACTING NO THE ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.
- 8. <u>ADDITIONAL PROVISIONS</u>. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]
- 9. <u>NOTICES</u>. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, OR (B) SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY:

]

The Collateral Agent:	[] [
The Project Owner:	
The Contracting Party:	

- 10. <u>SUCCESSORS AND ASSIGNS</u>. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.
- 11. <u>COUNTERPARTS</u>. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.
- 12. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By:		
,	Name:	
	Title:	
Г		1
L	Collateral Agent	_]
as C	onateral Agent	
By:		
By:	Name:	
	Title:	
A -1-		
Ack	nowledged and Agreed:	
Г		1
L		
By:		
<i>-</i> , .	Name:	
	Title:	

Schedule I

Assigned Agreement

Schedule II

Payment Instructions (Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement (Section 2(c))]

EXHIBIT U

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

(Energy Stora	ge Service Agreement	and

	ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of, 201_, is provided by, a
	RECITALS
(the " <u>Project</u> Service Agre <u>Storage Agre</u> in accordance	Buyer and, a Delaware limited liability company <u>Company</u> ") are parties to that certain Amended and Restated Energy Storage rement (60 MW-8hr. BESS), dated as of, 201_ (the "Energy rement"), pursuant to which Buyer agreed to purchase from the Project Company with the terms and conditions set forth therein certain energy storage-related in the relevant energy storage project described therein ("Storage Project").
[] and Investors sha	Pursuant to that certain [Lender Financing Agreement], by and between d [] (collectively, the "Class B Equity Investors"), the Class B Equity acquire the "Class B" membership interests in, the 100% Project Company.
required tha	Pursuant to Section of the [Lender Financing Agreement], the Lender has t this Estoppel Certificate be delivered as a condition precedent to the on of the transactions described therein.
	THEREFORE, in consideration of the foregoing recitals, Buyer hereby ees and acknowledges as follows:
1.	No default or event of default with respect to Buyer, nor, to the knowledge of Buyer, any other party has occurred under the Energy Storage Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Energy Storage Agreement.
2.	There exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Energy Storage Agreement.

Exhibit U - 1

- 3. Each representation or warranty made or given by Buyer in Section ____ of the Energy Storage Agreement is complete, true and correct.
- 4. As of the date hereof, (i) the Energy Storage Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or, to the knowledge of Buyer, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Energy Storage Agreement, (iv) Buyer is not aware of any event, act, circumstance or condition constituting an event of force majeure under the Energy Storage Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Energy Storage Agreement.
- 5. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
- 6. Buyer agrees that any notices required to be delivered to Seller under Section [__] of the Energy Storage Agreement, including notices of an [Event of Default], shall be delivered by Buyer to each of the Class B Equity Investors at their respective notice addresses set forth on Exhibit A hereto, and Buyer agrees that the Class B Equity Investors shall have the right (but not the obligation) to cure the defaults listed in any notice of default in accordance with Section [__] of the Energy Storage Agreement within a cure period that is the same length as the cure period afforded to Seller under the Energy Storage Agreement with respect to such event (but in no event less than 90 days), and which starts on the later of (i) the same date that the Seller's cure period expires under the Energy Storage Agreement or (ii) the date that the Class B Equity Investors receive such notice that lists the default or defaults of the Seller under the Energy Storage Agreement.
- 7. [Additional provisions to be included if necessary to clarify the Energy Storage Agreement.]
- 8. This Estoppel Certificate shall be governed by the laws of the State of New York, without regard to principles of conflict of law.

[Signature page follows]

Exhibit U - 2

IN	WIINESS WHI	EREOF, Buy	er has caused	this Estoppei	Certifica
to be executed by	its undersigned	authorized off	icer as of the	date first set	forth
above.					
					-
		By:			
		Name:			
		Title:			

Exhibit U - 3



SAN DIEGO COMMUNITY POWER Staff Report – Item 17

TO: Board of Directors

FROM: Kenny Key, Director of Power Contracts

VIA: Karin Burns, Chief Executive Officer

SUBJECT: Approve Energy Storage Service Agreement for the North Johnson

Energy Center

DATE: June 26, 2025

RECOMMENDATION:

Approve the proposed 15-year Energy Storage Service Agreement with North Johnson Energy Center, LLC for a 50 MW/200 MWh, 4-hour battery energy storage facility 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 contracts of at least 10 years in duration are integral components of its portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that Community Power signs with a developing facility will underpin a new, incremental project. In addition, long-term contracts lock in energy and capacity 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.

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 and storage facilities that will achieve commercial operation during 2023 through 2026. Further, Decision 23-02-040 allowed LSEs to contract for long-lead time resources, including long duration storage, with commercial operations out into 2028 to meet its resource adequacy requirements.

The proposed Energy Storage Service Agreement (ESSA) is for capacity, energy arbitrage and ancillary services benefits from a 50 MW/200 MWh, 4-hour battery energy storage facility, the North Johnson Energy Center project ("NJEC"), being developed by Wellhead Electric Company, Inc. ("Wellhead"). The ESSA originated from an offer

Community Power received in late 2023 via its 2023 Request for Information for projects seeking to apply to the CAISO Transmission Planning Process in 2024. Community Power engaged with Wellhead after short-listing the project to work on ESSA terms.

The SDCP board approved the ESSA at the February 27, 2025 board meeting. However, after such approval, changes to the tariff structure left the project financially unviable as contracted. Staff worked with Wellhead to adjust the contract to remain viable and reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION:

Staff negotiated the attached full toll ESSA for the purchase of capacity, energy arbitrage and ancillary services from the NJEC project, which is a standalone battery storage project to be developed in San Diego County by Wellhead.

As previously reviewed with the Ad Hoc Energy Contracts Working Group, the ESSA provides for a Guaranteed Commercial Operations DDate of June 1, 2026, providing critical local resource adequacy for Community Power's portfolio.

Below is additional information regarding Wellhead and the revised ESSA.

Background on Wellhead:

- Since 1985, Wellhead has been involved in the development, construction, completion and/or operation of twenty gas fired generation facilities (including four CHP), one landfill gas generation facility, several hybrid and energy storage projects, and multiple solar PV projects. Wellhead and/or its affiliates currently own and/or operate eleven generating projects totaling over 525 MW.
- Notable recent projects from Wellhead include:
 - Stanton Battery Energy Storage Project ("SBES"):
 - Commercial in 2023, SBES consists of a 68.8 MW, 4-Hour battery energy storage system ("BESS").
 - Fresno Energy Storage 1 ("FES1"):
 - Commercial in 2023, FES1 consists of a 16 MW, 1-Hour BESS, hybridized with an existing gas turbine.
 - Stanton Energy Reliability Center ("SERC"):
 - Commercial in 2020, SERC consists of a 98 MW, hybrid electric gas turbine. This project includes two GE LM6000 Gas Turbines and two ~10 MW, ½-Hour BESS's. The gas turbines and BESS's were integrated with Wellhead's patented EGT hybrid control system.

Contract Overview – North Johnson Energy Center

- Project: 50 MW/200 MWh (4-hour) lithium-ion battery energy system
- Project location: San Diego County, California
- Guaranteed commercial operation date: June 1, 2026
- Contract term: 15 years
- Pricing: Fixed capacity price adjusted for availability and verified capacity

• 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 guaranteed efficiency rates once the project is operational.

Revisions to Board Approved ESSA:

- Increased capacity price
- Increased number of daily cycles available to SDCP
- Modifications to the scheduling coordinator functions
- Updated for slice of day resource adequacy requirements

Community Benefits:

- Wellhead is committed to using union labor at the project and has entered into a Project Labor Agreement.
- Project development will bring approximately 130 clean-energy jobs throughout construction and will be staffed during operations by Wellhead's 6-person San Diego area O&M staff.
- Project is located in a disadvantaged community and will help displace local and regional gas-fired generation in peak hours and fewer renewable curtailments will occur.
- Wellhead is providing scholarships to local high schools for students continuing education in the areas of Science, Technology, Engineering and Math.

COMMITTEE REVIEW:

The ECWG approved the shortlisting of the NJEC project in December of 2023. Further, the ECWG approve the revised ESSA in June of 2025.

FISCAL IMPACT:

The competitive capacity pricing of the ESSA is confidential, but the long-term purchase of capacity, energy arbitration, and ancillary services will provide Community Power with significant value and cost certainty over the term of this ESSA.

ATTACHMENTS:

Attachment A: Energy Storage Service Agreement for the North Johnson Energy Center project

ITEM 17 ATTACHMENT A

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

<u>Seller</u>: North Johnson Energy Center, LLC ("<u>Seller</u>")

Buyer: San Diego Community Power, a California joint powers authority ("Buyer")

<u>Description of Facility</u>: A 50 MW-AC/200 MWh battery energy storage facility, located in San Diego County, in the State of California, as further described in <u>Exhibit A.</u>

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Executed Interconnection Agreement	
Guaranteed Construction Start Date	January 15, 2026
Transmission Plan Deliverability Allocation Obtained	
In-Service Date (back-feed)	
Initial Synchronization/Commencement of Trial Operations	
Guaranteed Commercial Operation Date	
Initial Showing Month	August 1, 2026

Delivery Term: 15 Contract Years

Guaranteed Capacity: 50 MW-AC at four (4) hours of continuous discharge

Dedicated Interconnection Capacity: 50 MW

Guaranteed Availability:

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1 – 15	

Minimum Efficiency Rate:

Contract Price:

Contract Year	Contract Price
1 – 15	



Product:

- ☐ Installed Capacity and Effective Capacity
- □ Capacity Attributes

<u>Scheduling Coordinator</u>: Wellhead Power eXchange, LLC (pursuant to and subject to <u>Exhibit</u> D)

Security Amount:

Development Security:	
Performance Security:	

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	1 0
Exhibit P Exhibit Q	Facility Availability Calculation Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Workforce Development
Exhibit T	Collateral Assignment Agreement

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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, Seller intends to develop, design, 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:

"AC" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.7(c).

"Administrative NQC Reduction" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to (a) a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates, or (b) a reduction that is specifically applied based on the operational characteristics of the Facility (e.g. any changes with respect to storage duration requirements) to the extent such reduction is not caused by Seller's failure to meet its obligations under this Agreement.

"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. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an "Affiliate" for purposes of this Agreement.

- "Agreement" has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
 - "Alternative Dispatch" has the meaning set forth in Section 4.6(b).
- "Ancillary Services" means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.
 - "Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.
- "<u>Automatic Generation Control</u>" or "<u>AGC</u>" has the meaning set forth in the CAISO Tariff.
 - "Availability Adjustment" has the meaning set forth in Exhibit C.
 - "Availability Notice" has the meaning set forth in Section 4.10.
- "Availability Standards" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.
- "Available Capacity" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.
- "Bankrupt" or "Bankruptcy" 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.
- "<u>Battery Charging Factor</u>" means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first five (5) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.
- "<u>Battery Discharging Factor</u>" means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first four (4) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

- "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. local time for the Party sending a Notice, or payment, or performing a specified action.
 - "Buyer" has the meaning set forth on the Cover Sheet.
- "Buyer Charging Energy" means Charging Energy received pursuant to a Charging Notice.
- "<u>Buyer Default</u>" means a failure by Buyer to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.
 - "Buyer Dispatched Test" has the meaning in Section 4.4(c).
- "<u>Buyer Discharging Energy</u>" means all Discharging Energy delivered pursuant to a Discharging Notice.
 - "Buyer's Indemnified Parties" has the meaning set forth in Section 16.1(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 Charging Energy and Discharging Energy delivered to or from the Delivery Point.
 - "CAISO Balancing Authority Area" has the meaning set forth in the CAISO Tariff.
- "CAISO Certification" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.
 - "CAISO Charges Invoice" has the meaning set forth in Exhibit D.
- "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 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 Tariff</u>" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as the same may be amended or modified from time-to-time and approved by FERC.

"Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

"Capacity Damages" has the meaning set forth in Section 6 of Exhibit B.

"<u>Capacity Test</u>" or "<u>CT</u>" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to <u>Exhibit O.</u>

"CEQA" means the California Environmental Quality Act.

"Change of Control" means a transaction or series of transactions where Wellhead Electric Company, WPower LLC, WPower Management Corporation or an Affiliate thereof which directly or indirectly have the power to control the management and policies of Seller prior to such transaction or series of transactions, ceases to directly or indirectly have the power to control the management and policies of Seller as a result of such transaction or series of transactions; provided that to the extent any of the foregoing entities cease to directly or indirectly continue to control the management and policies of Seller to accommodate any cash equity or tax equity transaction, such a change shall not constitute a Change of Control.

"Charging Energy" means the Energy delivered to the Facility, as measured at the Facility Metering Point by the 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 Facility.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer, the Facility SC or the CAISO, directing the 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 and the CAISO Tariff. For avoidance of doubt, any charging instructions made in connection with Seller's Dispatch Rights shall not be considered a Charging Notice. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit T.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Capacity Test" means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 6 of Exhibit B.

"Commercial Operation Date" or "COD" has the meaning set forth in Exhibit B.

- "Commercial Operation 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 Facility pursuant to this Agreement.
 - "Compliance Actions" has the meaning set forth in Section 3.7(a).
 - "Compliance Expenditure Cap" has the meaning set forth in Section 3.7.
 - "Confidential Information" has the meaning set forth in Section 18.1.
 - "Construction Start" has the meaning set forth in Exhibit B.
 - "Construction Start Date" has the meaning set forth in Exhibit B.
 - "Contract Price" has the meaning set forth on the Cover Sheet.
 - "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, breakage, recapture, prepayment and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating or repaying any arrangement pursuant to which it has hedged its obligations or entering into new arrangements (including any such hedging 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.
- "CPUC" means the California Public Utilities Commission, or any successor entity performing similar functions.
- "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)(iii).
 - "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 Charging Energy or Discharging Energy for the following reasons: (i) any System Emergency, (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, or (iii) for any other reason;
- (b) a curtailment ordered by the Transmission Provider 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 Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider 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 Transmission Provider due to a Transmission System Outage; or
- (d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with the Transmission Provider or distribution operator.
- "<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required hereunder, divided by (b)
- "<u>Damage Payment</u>" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).
 - "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>Deemed Delivered RA</u>" means for the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) a Force Majeure Event, and/or (ii) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.
- "<u>Dedicated Interconnection Capacity</u>" means an instantaneous amount of Charging Energy, Buyer Charging Energy, Buyer Discharging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.
 - "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
- "<u>Delivered RA</u>" means the sum of (a) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and

CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.

"<u>Deliverability</u>" has the meaning set forth in the CAISO Tariff.

"<u>Deliverability Allocation Date</u>" means the date on which Seller notifies Buyer that CAISO has confirmed to Seller's reasonable satisfaction that the Facility has been allocated Deliverability which is sufficient, in Seller's reasonable judgment, to finance and construct the Facility, but which is no less than 50 MW.

"<u>Deliverability Status</u>" means the receipt and designation by CAISO of either Interim Deliverability Status or Full Capacity Deliverability Status with no contingencies.

"Delivery Point" means the PNode assigned to the Facility by the CAISO.

"<u>Delivery Term</u>" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Guaranteed 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 (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"<u>Discharging Energy</u>" means all Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer, the Facility SC, or the CAISO, directing the 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 and the CAISO Tariff. For avoidance of doubt, any discharging instructions made in connection with Seller's Dispatch Rights shall not be considered a Discharging Notice. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

"<u>Disclosing Party</u>" has the meaning set forth in Section 18.2.

"<u>Dispatch Notice</u>" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO or Buyer to Seller or the Facility SC, directing the Facility to charge or discharge Energy at a specific MWh rate, for a specified period of time, and/or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions. For avoidance of doubt, any instructions made in connection with Seller's Dispatch Rights shall not be considered a Dispatch Notice.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point to the extent such Electrical Losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

"Effective Date" has the meaning set forth in the Preamble.

"Effective Flexible Capacity" or "EFC" has the meaning set forth in the CAISO Tariff.

"<u>Efficiency Rate</u>" means the tested rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy.

"<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 Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

"Emission Reduction Credits" or "ERCs" means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Energy" means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

"Energy Management System" or "EMS" means the Facility's energy management system.

"Energy Tolling Period" has the meaning set forth in Section 2.2.

"Energy Tolling Resource" means the Facility is being operated in a manner in which Seller will make available, charge and discharge, deliver, and sell electricity therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions.

"Environmental Cost" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment,

costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

"Event of Default" has the meaning set forth in Section 11.1.

"Excused Event" has the meaning set forth in Exhibit P.

"Extension Term" has the meaning set forth in Section 2.1(b).

"<u>Facility</u>" means the energy storage facility described on the Cover Sheet and in <u>Exhibit</u> A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"<u>Facility Meter</u>" 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 Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Facility Metering Point" means the location(s) of the Facility Meter shown in Exhibit R.

"<u>Facility SC</u>" means (i) as of the Effective Date, Wellhead Power Exchange, LLC, or (ii) if Buyer has revoked its selection of Seller as the responsible Party for Scheduling Coordinator Services in accordance with <u>Exhibit D</u>, then, either Buyer or Buyer's designee acting as the Facility's Scheduling Coordinator.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"Flexible Capacity Category" has the meaning set forth in the CAISO Tariff.

"<u>Flexible RAR</u>" means 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.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<u>Full Capacity Deliverability Status</u>" or "<u>FCDS</u>" has the meaning set forth in the CAISO Tariff.

"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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

"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, "Governmental Authority" shall not in any event include any Party.

"Guaranteed Availability" means the minimum guaranteed Monthly Capacity Availability of the Facility in each month of the Delivery Term, as set forth on the Cover Sheet.

"Guaranteed Capacity" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, as 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 the guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

"<u>Guaranteed RA Amount</u>" means the Qualifying Capacity of the Facility based upon the Effective Capacity, as determined by the CPUC, *minus* Administrative NQC Reduction in the applicable Showing Month.

"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.

"Hazardous Substance" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Imbalance Energy" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

"Indemnified Party" shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

"Indemnifying Party" shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

"<u>Initial Showing Month</u>" means August 2026; *provided however*, if the Guaranteed Commercial Operation Date is extended as set forth in <u>Exhibit B</u>, the Initial Showing Month shall be the first month following the Commercial Operation Date that the Facility SC is capable of including the Resource Adequacy Benefits from the Facility on a Supply Plan.

"<u>Initial Synchronization</u>" means the commencement of Trial Operations (as defined in the CAISO Tariff).

"Installed Capacity" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point (to the extent such Electrical Losses are not already reflected in the Facility Meter measurements), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 6 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

"Insurable Force Majeure Event" means any Force Majeure Event which results in direct, physical loss to the Facility.

- "Interim Deliverability Notice" has the meaning set forth in Section 3.3(d).
- "Interim Deliverability Period" has the meaning set forth in Section 3.3(d).
- "Interim Deliverability Status" has the meaning set forth in the CAISO Tariff.
- "Inter-SC Trade" 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 Delay" has the meaning set forth in Section 4 of Exhibit B.
- "<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.
 - "Interconnection Point" has the meaning set forth in Exhibit A.
 - "Interest Rate" has the meaning set forth in Section 8.2.
- "<u>ITC</u>" means the investment tax credit established pursuant to Section 48 or other applicable provisions 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>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "<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 (a) 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 and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) 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 (i) Zions Bancorporation, N.A or (ii) The Bank of Nova Scotia, New York Agency or (iii) a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) 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 or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K. To the extent Seller's preferred standby letter of credit issuer requests reasonable changes to the form of Exhibit K, Buyer will endeavor to accommodate such requested changes in good faith.

"<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 Capacity Area Resource" has the meaning set forth in the CAISO Tariff.

"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.

"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, 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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

"Marketable Emission Trading Credits" means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

"Master File" has the meaning set forth in the CAISO Tariff.

- "Maximum Charging Capacity" means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.
- "<u>Maximum Discharging Capacity</u>" means the highest level at which the Facility may be discharged, expressed in MW and as set forth in <u>Exhibit Q</u>.
- "<u>Milestones</u>" means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.
 - "Minimum Efficiency Rate" means the percentage specified on the Cover Sheet.
 - "Monthly Capacity Availability" has the meaning set forth in Exhibit P.
- "Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.
 - "Moody's" means Moody's Investors Service, Inc., or its successor.
- "Must Offer Obligations" means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.
- "<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>NERC</u>" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.
 - "Net Qualifying Capacity" or "NQC" 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).
- "<u>Notification Deadline</u>" in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

- "Operating Procedures" has the meaning set forth in the CAISO Tariff.
- "Operating Restrictions" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.
 - "Outage Schedule" has the meaning set forth in Section 4.12(a)(i).
 - "Partial Deliverability Amount" has the meaning set forth in Section 3.3(d)(iii).
 - "Party" has the meaning set forth in the Preamble.
- "<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth 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 or assets under management of not less than or a Credit Rating of at least s; and
- (b) At least two (2) years of experience in the ownership and operations of energy generation or storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.
- "<u>Person</u>" 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 a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).
 - "PMAX" means the applicable CAISO-certified maximum operating level of the Facility.
 - "PMIN" means the applicable CAISO-certified minimum operating level of the Facility.
 - "PNode" has the meaning set forth in the CAISO Tariff.
- "Portfolio" means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.
- "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

"Portfolio Financing Entity" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

<u>"Pre-Deliverability Period"</u> has the meaning set forth in Section 2.2(b).

"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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

"Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"RA Compliance Showing" means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) 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 3.5(b).

"RA Guarantee Date" means

"RA Penalties" 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 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; provided, that RA Penalties shall not include any CPUC penalty multipliers resulting from Buyer's prior or aggregate RA deficiencies.

"RA Shortfall Amount" shall be determined by calculating the difference of the Guaranteed RA Amount *minus* the Delivered RA in the applicable Showing Month; *provided*, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

"RA Shortfall Month" means any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall Amount;

"Real-Time Market" has the meaning set forth in the CAISO Tariff.

"Receiving Party" has the meaning set forth in Section 18.2.

"Reliability Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Remedial Action Plan" has the meaning set forth in Section 2.4.

"Replacement RA" means Resource Adequacy Benefits from a Resource Adequacy Resource (as defined in the CAISO Tariff), if any, (a) equivalent in all respects to those that would have been provided by the Facility under the RA resource counting rules established by the CPUC, CAISO or other Governmental Body with jurisdiction with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, the same Slice-of-Day (as 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, such consent not to be unreasonably withheld, conditioned or delayed, to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) located within the CAISO Balancing Authority Area.

"Requested Confidential Information" has the meaning set forth in Section 18.2.

"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 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 Capacity" or "RA Capacity" has the meaning set forth in the CAISO Tariff.

"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.

"<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

"<u>SCADA Systems</u>" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from the Facility SC.

"Schedule" has the meaning set forth in the CAISO Tariff, and "Scheduled" and "Scheduling" have a corollary meaning.

"Scheduled Energy" means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO 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.

"Scheduling Coordinator Services" has the meaning in Exhibit D.

"Security Interest" has the meaning set forth in Section 8.9.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller Dispatch" has the meaning set forth in Section 4.9(k).

"Seller's Dispatch Rights" has the meaning set forth in Section 4.9(k).

"Seller's Indemnified Parties" has the meaning set forth in Section 16.1(b).

"Seller Initiated Test" has the meaning set forth in Section 4.4(c).

"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 Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities) 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 a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a 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; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in <u>Exhibit A</u> shall be subject to Buyer's approval of such updates in its sole discretion.

"Site Control" means that, for the Contract Term, Seller (or, prior to the Delivery Term, Seller or its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"<u>State of Charge</u>" or "<u>SOC</u>" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage.

"<u>Station Use</u>" has the meaning defined by the retail energy provider or the distribution service provider's tariff.

"Stored Energy Level" means, at a particular time, the amount of electric Energy in the Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

"<u>Subsequent Purchaser</u>" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"Supplementary 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 Transmission Provider, 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.

"System RAR" means the 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, but excluding local and Flexible RAR. "System RAR" may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

"<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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

"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(b).

"Throughput" means, for a day or Contract Year (as the context dictates), the cumulative amount of Discharging Energy from the Facility for such time period.

"<u>Transmission Provider</u>" means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain

transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Discharging Energy 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>Transmission System Outage</u>" means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller's actions or inactions and that prevents (i) Buyer or the CAISO (as applicable) from receiving Discharging Energy onto the Transmission System or (ii) Seller from receiving Charging Energy at the Delivery Point or delivering Discharging Energy to the Delivery Point.

"<u>Unplanned Outage</u>" means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

- 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 shall mean 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 terms "include" and "including" mean "include or including (as applicable) 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;

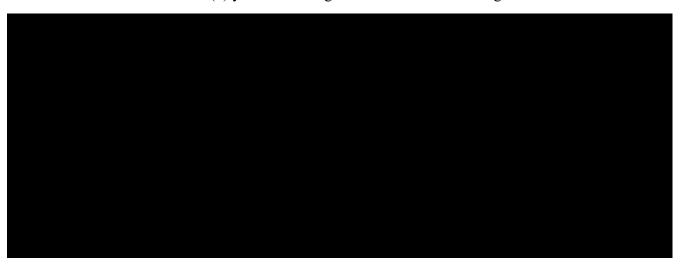
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or 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, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.3.
- (b) Delivery Term Extension. Provided that Seller reasonably believes that the Facility can perform its obligations under this Agreement for an additional five (5) years after the Contract Term, Buyer may, in its sole discretion, elect to extend the Contract Term for an additional five (5) year period ("Extension Term"). Within ninety (90) days prior to the conclusion of the Delivery Term, Buyer shall provide Seller written notice of Buyer's decision on whether to extend the Delivery Term. The Parties shall cooperate in good faith to make only those changes to this Agreement that are necessary to reflect the extension of the Delivery Term. All other terms and conditions of this Agreement, including Contract Price, shall remain in effect during the Extension Term.

(c) <u>Survival</u>. 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 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.



- 2.3 <u>Commercial Operation; Conditions Precedent</u>. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) 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.
- (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 and Efficiency Rate on the Commercial Operation Date;
- (b) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;
- (c) Seller has provided Buyer with (i) a copy of written notice (or other evidence reasonably acceptable to Buyer) from CAISO that the Facility has achieved Interim Deliverability Status or Full Capacity Deliverability Status in the amount of the Guaranteed Capacity; or (ii) notice that the Facility will be operated as an Energy Tolling Resource pursuant to Section 2.2;

- (d) 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;
 - (e) Seller has obtained CAISO Certification for the Facility;
- (f) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to commence operations of the Facility;
- (g) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained 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;
 - (h) Seller has Site Control;
- (i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
- (j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and
- (f) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.
- 2.4 <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 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 <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 Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
- 2.5 <u>Remedial Action Plan</u>. If Seller misses a Milestone by more than sixty (60) days, except as the result of Force Majeure Event, Buyer Default, or any failure of the Facility's SC if the Facility SC is the Scheduling Coordinator for the Facility, Seller shall submit to Buyer, within ten (10) Business Days of the end of such sixty (60)-day period following such missed Milestone completion date, a remedial action plan ("<u>Remedial Action Plan</u>"), 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. 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.

2.6 <u>Pre-Commercial Operation Actions</u>. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and Buyer's delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

- 2.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Effective Capacity and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.
- 3.2 <u>Discharging Energy</u>. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions and Seller's Dispatch Rights (if applicable). Title to and risk of loss related to Buyer Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.
- 3.3 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status for the Facility's Guaranteed 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 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 and subject to Sections 2.2, 3.3(d) and 3.7, Seller shall maintain Interim Deliverability Status or Full Capacity Deliverability Status for the

Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to use commercially reasonable efforts to transfer all available Resource Adequacy Benefits from the Facility to Buyer.

- (c) For the duration of the Delivery Term, and subject to Section 3.7, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.
- (d) The Parties acknowledge and agree that Seller will need to obtain Interim Deliverability Status from the CAISO on a yearly basis until such time as certain network upgrades (which may include certain transmission plan upgrades) are completed that will allow the Facility to achieve Full Capacity Deliverability Status (such time period, the "Interim Deliverability Period"). Beginning in the year prior to the first year of expected Commercial Operation and continuing throughout the Interim Deliverability Period, Seller shall provide Buyer with Notice no later than August 1 of each year as to whether it has obtained Interim Deliverability for all or any portion of the Guaranteed Capacity for the following calendar year ("Interim Deliverability Notice"); provided however, if CAISO has not provided notice to Seller by August 1, Seller shall provide the Interim Deliverability Notice to Buyer within two (2) Business Days of receipt of notice from CAISO of the deliverability status of the Facility.
- (i) If Seller confirms in an Interim Deliverability Notice that the CAISO has granted Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for the following calendar year, then the Contract Price for such year shall be as set forth on the Cover Sheet.
- (ii) If Seller confirms in an Interim Deliverability Notice that the CAISO has <u>not</u> granted Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for the following calendar year, Seller shall have the right to provide Replacement RA in the amount of any shortfall and up to but not exceeding the Guaranteed Capacity for each of the Showing Months in such year and, if such Replacement RA is fully provided, the Contract Price for such following year shall be as set forth on the Cover Sheet. Seller shall provide Notice to Buyer by no later than August 1 of each year during the Interim Deliverability Period of the amount of Replacement RA to be provided by Seller for each Showing Month of the following calendar year. Seller may offer Replacement RA to Buyer after August 1 for the following calendar year; provided however, acceptance of such offer shall be at Buyer's sole discretion.
- (iii) If Seller confirms in an Interim Deliverability Notice that the CAISO has not granted Interim Deliverability Status to the Facility in the full amount of the Guaranteed Capacity for the following calendar year and Seller does not fully provide Replacement RA for such year, then the Facility will be designated as an Energy Tolling Resource for such year. During any calendar year in which the Facility is an Energy Tolling Resource, (A) Buyer will only show the Facility in its yearly or any monthly Supply Plan showings in an amount equal to the number of MW of Facility NQC (inclusive of the quantity of Replacement RA

provided, if any) that Seller is able to provide to Buyer for the applicable monthly Supply Plan, if any (the "Partial Deliverability Amount");

(C) the Parties shall agree upon

any technical or operational changes necessary to allow Buyer to operate the Facility as an Energy Tolling Resource for such year; and (D) Seller shall not be deemed to be in default or otherwise in violation of this Agreement solely as the result of the CAISO not granting Interim Deliverability Status to the Facility in the amount of the Guaranteed Capacity for such year.

(iv) Notwithstanding Sections 3.3(d)(ii) and (iii), if CAISO has not granted Interim Deliverability Status to the Facility for 2029, commencing on January 1, 2029 to the first Showing Month that Buyer can show the Facility on its monthly supply plan, Seller shall provide Replacement RA to Buyer in the amount of the Guaranteed Capacity from the Replacement RA Unit which Replacement RA shall equal the full NQC of the Replacement RA Unit and be included in the calculation of Delivered RA in an amount equal to the Guaranteed Capacity. If Seller provides such Replacement RA to Buyer in the amount of the Guaranteed Capacity from the Replacement RA Unit, the Contract Price shall be as set forth on the Cover Sheet. For the avoidance of doubt, the Replacement RA Unit's Replacement RA shall be deemed to be equal to the NQC MW's that the Facility would have qualified for if the Facility was granted Full Capacity Deliverability Status or Interim Deliverability Status. Shortfalls in Replacement RA from the Replacement RA Unit shall be included in the calculation of RA Shortfall Amount for the applicable month and Section 3.5 shall apply to such shortfalls.

3.4 **Ancillary Services**.

Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Effective Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

3.5 Resource Adequacy Failure.

- - 3.6 <u>Buver's Re-Sale of Product</u>. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, resale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.
 - 3.7 <u>Compliance Expenditure Cap</u>. If a change in Laws occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at Of Guaranteed Capacity ("Compliance Expenditure Cap").
 - (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "<u>Compliance Actions</u>." For clarity, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage capacity, or otherwise alter the physical design or configuration of the Facility in any material manner.
 - (b) 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.
 - (c) 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 or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance"

<u>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.

- (d) 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.
- (e) If (x) Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, (y) Buyer does not pay, or refuses to pay, the compliance costs specified in the Notice that are in excess of the Compliance Expenditure Cap, or (z) it is not possible for Seller to achieve compliance with this Agreement or a change in Law through the payment or incurrence of costs, then in each case (i) Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions specified in the Notice for the remainder of the Contract Term and Seller shall not be deemed to be in breach or default hereunder, (ii) Seller shall not owe any damages that would have otherwise been due hereunder arising from or attributable to any failure to take such Compliance Actions specified in the Notice, and (iii) Buyer shall continue to pay Seller under this Agreement for the remainder of the Contract Term without any reduction in payments as if all such Compliance Actions were taken.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

- **<u>Delivery.</u>** Subject to the provisions of this Agreement, including Section 4.9(a), commencing on the Commercial Operation Date 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; provided, that the Parties acknowledge and agree that Capacity Attributes shall be deemed supplied and delivered by Seller once the Facility SC includes the Capacity Attributes on a Supply Plan or at Buyer's direction does not include the Capacity Attributes or a portion thereof on a Supply Plan. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including 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 Buyer Charging Energy to the Delivery Point (including the cost of Buyer Charging Energy itself) and delivery of Buyer Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Buyer Charging Energy and Buyer Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.
- 4.2 <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 throughout the Delivery Term.

4.3 **Storage Availability and Efficiency.**

- (a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than the Guaranteed Availability, which Monthly Capacity Availability shall be calculated in accordance with Exhibit P. If the Monthly Capacity Availability during any month is less than the Guaranteed Availability, then Buyer's Monthly Capacity Payment shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit C).
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with a Capacity Test conducted pursuant to Exhibit O. If the Efficiency Rate during any month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C.

4.4 **Facility Testing**.

- (a) <u>Capacity Tests</u>. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.
- (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any 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.
- (ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.
- (b) <u>Additional Testing</u>. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).
- (c) Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests, and all required annual tests pursuant to Section B of the section headed "Capacity Test Notice and Frequency" in <u>Exhibit O</u>, shall be deemed Buyer-instructed dispatches of the Facility ("<u>Buyer Dispatched Test</u>"). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-

requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "<u>Seller Initiated Test</u>".

- (i) For any Seller Initiated Test other than a Capacity Test required by <u>Exhibit O</u> for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).
- (ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The 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 Monthly Capacity Availability.

4.5 Testing Costs and Revenues.

- (a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.
- (b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.
- (c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 Facility Operations.

- (a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
- (b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("<u>Automated Dispatches</u>"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up

procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices ("<u>Alternative Dispatches</u>").

- (c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer's request.
 - (d) Seller shall maintain accurate records with respect to all Capacity Tests.
- (e) Seller shall maintain and make available to Buyer upon request records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and upon request permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.
- 4.7 <u>Dispatch Notices</u>. Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or the Facility SC. If Automated Dispatches are not possible for reasons beyond Buyer's control, Alternative Dispatches may be provided pursuant to Section 4.6(b).
- 4.8 Facility Unavailability to Receive Dispatch Notices. To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability except to the extent that the Facility is unable to receive or respond to Dispatch Notices due to an Excused Event or any circumstances at the high-voltage side of the Delivery Point or beyond that point.

4.9 Energy Management.

- (a) <u>Charging Generally</u>. Upon receipt of a valid Charging Notice, Seller shall take all commercially reasonable action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Buyer Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Buyer Charging Energy.
- (b) <u>Charging Notices</u>. Buyer shall have the right to direct Seller to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating

Restrictions. Each Charging Notice issued by Buyer in accordance with this Agreement shall be effective unless and until Buyer, Facility SC, or CAISO modifies such Charging Notice by providing Seller and the Facility SC with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

- No Unauthorized Charging. Seller shall not charge the Facility during the (c) Delivery Term other than (i) pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), (ii) in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), (iii) pursuant to a notice from the Transmission Provider or Governmental Authority, or (iv) in connection with Seller's Dispatch Rights (if applicable). If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice (except as allowed by Seller's Dispatch Rights, if applicable), or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge. If, during the Delivery Term, and only if Seller is the Facility SC, Seller charges the Facility as allowed pursuant to Seller's Dispatch Rights, then (x) Seller shall be responsible for all Energy costs associated with such charging of the Facility, and (y) Seller shall be entitled to discharge such Energy and shall be entitled to any and all revenues associated with such discharge.
- (d) <u>Discharging Notices</u>. Buyer shall have the right to direct Seller to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer, the Facility SC or the CAISO modifies such Discharging Notice by providing the Seller and the Facility SC with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation unless such CAISO charges and penalties arise from a Seller Dispatch (if applicable).
- (e) <u>No Unauthorized Discharging</u>. Seller shall not discharge the Facility during the Delivery Term other than (i) pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), (ii) in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), (iii) pursuant to a notice from the Transmission Provider or Governmental Authority, or (iv) as allowed pursuant to Seller's Dispatch Rights (if applicable).
- (f) <u>Unauthorized Charges and Discharges</u>. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement

procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11. Seller shall have no obligation to comply with and shall have no liability arising out of any failure or refusal to comply with any Notice, instrument, order, Charging Notice or Discharging Notice that is inconsistent with the Operating Restrictions.

- have priority over any Charging Notice or Discharging Notice issued by Buyer or the Facility SC, as applicable, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).
- (h) <u>Pre-Commercial Operation Date Period.</u> Prior to the Guaranteed Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to (i) charge and discharge the Facility and (ii) sell any and all available Resource Adequacy Benefits to a third party; *provided* that prior to selling Resource Adequacy Benefits pursuant to this Section 4.9(h) to any third party, Seller shall provide Buyer with a written offer to sell such Resource Adequacy Benefits to Buyer on the same terms and conditions that Seller would offer to a third party. If Buyer fails to accept such offer within ten (10) Business Days of receipt of such offer, Seller shall have the right to market and sell such Resource Adequacy Benefits to a third party. Notwithstanding any other provision of this Agreement, if Seller is able to sell Resource Adequacy Benefits prior to the Guaranteed Commercial Operation Date, the RA Guarantee Date shall be June 1, 2026.
- (i) <u>Curtailments</u>. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.
- (j) <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 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 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.

(k) <u>Seller's Dispatch Rights.</u> Notwithstanding anything to the contrary in this Agreement, and provided that Buyer has elected Seller as the Facility SC and only in such case, Seller shall have the right to charge or discharge the Facility (a "<u>Seller Dispatch</u>") (i) in an amount not to exceed (x) 10,000 kwh per day and (y) twenty-seven (27) cycles during the Delivery Term and (ii) only during any period for which Buyer has not provided either a Charging Notice or Discharging Notice (such rights, "<u>Seller's Dispatch Rights</u>"). Seller's Dispatch Rights are subject to, and shall not interfere with, Buyer's right to the Product. To the extent that a Seller Dispatch conflicts with a Buyer Charging Notice, Buyer Discharging Notice or CAISO Dispatch, such Buyer Notice or CAISO Dispatch shall take priority. Should a Seller Dispatch prevent Buyer from receiving any Product, Seller shall reimburse Buyer for any lost revenues for the period during which Buyer was prevented from receiving the Product.

4.10 <u>Capacity Availability Notice</u>.

- (a) 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 the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("Monthly Forecast").
- (b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "<u>Availability Notice</u>"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in <u>Exhibit G</u>, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.
- (c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.
- 4.11 <u>Excess Installed Capacity</u>. It is acknowledged that Seller has the right and option in its discretion to install capacity in excess of the Guaranteed Capacity as back-up for the Installed Capacity and Effective Capacity. For all purposes of this Agreement, the amount of Installed Capacity or Effective Capacity shall never be deemed to exceed the Guaranteed Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the

Facility at an instantaneous rate (in MW) in excess of the Effective Capacity or (ii) charge the Facility to a level (in MWh) in excess of the Effective Capacity multiplied by four (4) hours.

4.12 **Outages**

(a) <u>Planned Outages</u>.

- (i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall endeavor to limit Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.
- (ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); provided, 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 replacement Capacity Attributes as required by the CAISO). For avoidance of doubt, if the CAISO requires substitution RA in order for the Outage to be an Approved Maintenance Outage, then Seller may procure such substitution RA from a third party and Buyer or the Facility SC, if applicable, will cooperate to allow Seller to make use of such substitution RA. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
- (b) <u>No Planned Outages During Summer Months.</u> Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
- (c) <u>Planned Outage Timing</u>. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
 - (d) <u>Notice of Unplanned Outages</u> Seller shall notify Buyer and the Facility SC

no later than ten (10) minutes following Seller becoming aware of the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer and the Facility SC as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer and the Facility SC the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

- (e) <u>Inspection</u>. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.
- (f) <u>Reports of Outages</u>. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5 TAXES, GOVERNMENTAL COSTS

- 5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). 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) or on Buyer Charging Energy prior to its delivery to Seller. 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 to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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*, 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 AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility**.

- (a) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.
- (b) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed Availability and the Guaranteed Efficiency Rate).
- 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, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in <u>Exhibit N</u> Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging 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, (ii) shall provide for separate metering of the Facility; (iii) shall not reduce the interconnection capacity under the Interconnection Agreement available for the Facility's sole use below the Dedicated Interconnection Capacity; (iv) 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 ID; and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

- **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is 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 Facility 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 shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface -Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.
- 7.2 Meter Verification. Seller shall use commercially reasonable efforts to request permission from CAISO to test the 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 Facility 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 Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; 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 for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including (i) 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 Buyer Charging Energy, Buyer Discharging Energy, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; 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.

- Payment. Buyer shall make payment to Seller of Monthly Capacity Payments 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 an annual Interest Rate equal to the prime rate 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 two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable 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; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.
- 8.5 <u>Billing Disputes</u>. 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 thirty (30) 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 (a) deliver the Development Security to Buyer in an amount equal to the amount set forth for the Development Security on the Cover Sheet 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. Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the applicable amount;

Upon

the earlier of (a) Seller's delivery of the Performance Security, or (b) 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. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. 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 Exhibit L. 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 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 (or other instrument) that meets the requirements set forth in the definition of Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form. If the Development Security was posted as a Letter of Credit, then Buyer shall reasonably cooperate with Seller to amend or modify such Letter of Credit so that such Letter of Credit satisfies the requirements of the 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 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 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 such obligations are satisfied in full.

8.10 **Financial Statements.** 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 in <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.
- 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) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially 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; pandemic; 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 an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement), except to the extent caused by a Force Majeure Event; (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 electrical facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order, except to such extent such Curtailment Order is caused by a Force Majeure Event; (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) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility, except to the extent any work stoppage is caused by a Force Majeure Event; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) 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.
- No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, 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 (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with due 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 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. 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 electrical facilities necessary to transfer funds to the payee Party, or (b) subject to Section 5 of Exhibit 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 Section 4 of

Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

Notice. Within four (4) Business Days of the claiming Party's awareness of the 10.3 impact 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 claiming Party's awareness of the impact of the 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. Failure to provide timely notice 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. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. 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 must be of no greater scope and of no longer duration than is required by the 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);

- (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate that does not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in 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)-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 that was not discharged by the Facility;
- (ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be adjusted pursuant to Section 2(a) of Exhibit B and extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B and <a href="E
- Availability for such Contract Year is

 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 of the simple average of the Monthly Capacity Availability calculations for such Contract Year

 and the actions that 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 ("<u>Cure Plan</u>") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

- (iv) 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;
- (v) 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 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;
- (vi) 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;

(vii) if Seller fails to maintain an Effective Capacity of the Installed Capacity for more than three hundred sixty (360) consecutive days;

- (viii) 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 Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;
- (ix) 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 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 twenty (20) 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, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and
- (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.

Notwithstanding the foregoing, in the event that a Seller Event of Default occurs under Section 11.1(b)(ii), and Buyer as the Non-Defaulting Party does not establish any Early Termination Date within thirty (30) days following the occurrence of such Seller Event of Default, then Seller may in its sole discretion terminate this Agreement upon written Notice to Buyer that designates an Early Termination Date, and Buyer shall be entitled to the remedies set forth in this Section 11.2 subject to the limitations set forth in Article 12.

- 11.3 <u>Damage Payment; Termination Payment</u>. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.
- (a) <u>Damage Payment Prior to Commercial Operation Date</u>. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

- (i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to retain all Daily Delay Damages and Commercial Operation Delay Damages paid prior to the Termination Date and immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.
- (ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the aggregate of all Settlement Amounts plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller 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 Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.
- Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("Termination Payment") shall be the aggregate of all Settlement Amounts plus any and 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 (i) 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, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) 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, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), 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.



- 11.7 <u>Rights And Remedies Are Cumulative</u>. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, 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 (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, OR (E) CONSTITUTING LOST OR FOREGONE TAX CREDITS, 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.
- 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, INCLUDING UNDER SECTIONS 2.2(c), 3.5, 4.3, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, and EXHIBIT C, 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; COVENANTS

- 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 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, except where such failure does not have a material adverse effect on Seller's performance under 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) Neither Seller nor its Affiliates have received written notice from or been advised in writing by any existing supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.
- 13.2 <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 its jurisdiction. 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, 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.

- (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, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, 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 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, (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.
- (f) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- (g) 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 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>Seller's Covenants</u>. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) <u>Compliance with Laws</u>. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination

and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

- (b) Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.
 - 13.5 <u>Site Control</u>. Seller shall maintain Site Control throughout the Delivery Term.
- 13.6 <u>Prevailing Wage</u>. Seller shall use commercially 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 13.6 will be satisfied, as one of many means or methods, upon the execution of a project labor agreement related to construction of the Facility.
- 13.7 <u>Workforce Development</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>.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may 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. Seller may, without Buyer's consent, assign this Agreement to any Person as part of a tax equity transaction or otherwise, provided that such Person must be subject to management control by the same Person(s) that had the power to control the management and policies of Seller. 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, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable expenses associated with

the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

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 without the consent of Buyer. In connection with any financing or refinancing of the Facility, 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>"), which shall be substantially in the form of <u>Exhibit T</u>. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing or refinancing of the Facility. Other than the Collateral Assignment Agreement, Buyer shall 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 this Agreement.

14.3 **Permitted Assignment**.

- (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
- (i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.
- (b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to 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.
- (c) Notwithstanding the foregoing, 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 confirmed by Buyer.
- 14.4 <u>Portfolio Financing</u>. Buyer agrees and acknowledges that Seller may elect to finance or refinance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may

include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 <u>Buyer Financing Assignment</u>. Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller has reasonably determined that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any material respect.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 <u>Governing Law</u>. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Subject to Section 15.2, the Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.
- 15.2 <u>Dispute Resolution</u>. In the event of any dispute arising under this Agreement, 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 and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.
- 15.3 <u>Attorneys' Fees</u>. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification**.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Buyer's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees),

howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

- (b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "Seller's Indemnified Parties") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer's breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.
- (c) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.
- (d) Nothing in this Section 16.1 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 own sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation 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 an 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. General Liability. Seller shall maintain, or cause to be maintained at its sole (a) expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of occurrence, and an annual aggregate of not less than endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Employer's Liability Insurance. Seller, if it has employees, shall maintain (b) Employers' Liability insurance with limits of not less than for injury or death occurring as a result of each accident. With regard to bodily injury by disease, policy limit will apply to each employee. the Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law. Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions. Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured. Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above. Construction All-Risk Insurance. Seller shall maintain or cause to be

maintained during the construction of the Facility prior to the Commercial Operation Date,

(g)

construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

- (h) <u>Property Insurance</u>. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.
- (i) <u>Subcontractor Insurance</u>. Seller shall make 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 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 (i)(i) and (i)(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(i).
- Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. To the extent commercially and reasonably available, 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; provided that to the extent any such notices of modification are not commercially and reasonably available, Seller shall provide Buyer at least thirty (30) days prior Notice 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 subcontractors.

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; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 <u>Duty to Maintain Confidentiality</u>. The Party receiving Confidential Information (the "<u>Receiving Party</u>") from the other Party (the "<u>Disclosing Party</u>") shall not disclose Confidential Information to a third party (other than the Party's members, employees, actual or potential lenders or investors, counsel, accountants, contractors, vendors, directors 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*, 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 18.2 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.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer 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 Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer's Indemnified Parties from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

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>Further Permitted Disclosure</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)) or investors or purchasers (including tax credit 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 press release. 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>. Except as otherwise explicitly permitted herein, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.
- 19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 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) and/or, to the extent set forth herein or in any Collateral Assignment Agreement, 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 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.
- Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.
- 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. Each Party shall solely be responsible for all its debts, obligations and liabilities accruing and arising out of this Agreement, and neither Party shall have any rights and shall not make any claims, take any actions or assert any remedies against the other

Party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party, 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.
- 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.
- 19.13 <u>Further Assurances</u>. Each of the Parties hereto agrees 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 assumption 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.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

NORTH JOHNSON ENERGY CENTER, LLC	SAN DIEGO COMMUNITY POWER
By: Name: Title:	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: North Johnson Energy Center

Site includes all or some of the following APNs:

County: San Diego County

CEQA Lead Agency: City of El Cajon

Zip Code: 92020

Latitude and Longitude:

Facility Description: Battery Energy Storage Projected rated at 50 MW & 200 MWh

Interconnection Point: El Cajon 69/12kV Substation

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: ELCAJN_6_LM6K (Proxy until assigned by CAISO)

Transmission Provider: PTO = SDG&E

Additional Information: Site Plan provided below.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- "Construction Start" will occur upon Seller's acquisition of all applicable a. regulatory authorizations, approvals and permits necessary to commence construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract (or similar contract) and issued thereunder 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. 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 Daily Delay Damages pursuant to Section 1(b) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed of extensions by such payment of Daily 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 (including any previous extensions) Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily 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 Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.
- 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 2.3 of the

Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "COD Certificate") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved, which acknowledgement shall not be unreasonably withheld, conditioned or delayed. The "Commercial Operation Date" shall be the date on which Commercial Operation is achieved.



- b. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be adjusted pursuant to Section 2(a) of this Exhibit B, and extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of this Exhibit B and/or a Development Cure Period pursuant to Section 4 of this Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- In addition to extensions pursuant to a Development Cure Period, Seller may extend c. 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 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 may 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. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.
- 3. Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not

achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), 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, both be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out 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; or
 - b. the Interconnection Facilities or Reliability 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 (an "<u>Interconnection Delay</u>"); or
 - c. Buyer or the Facility SC has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date or Buyer has otherwise breached it obligation(s) under this Agreement and such breach causes a delay in the COD.





EXHIBIT C

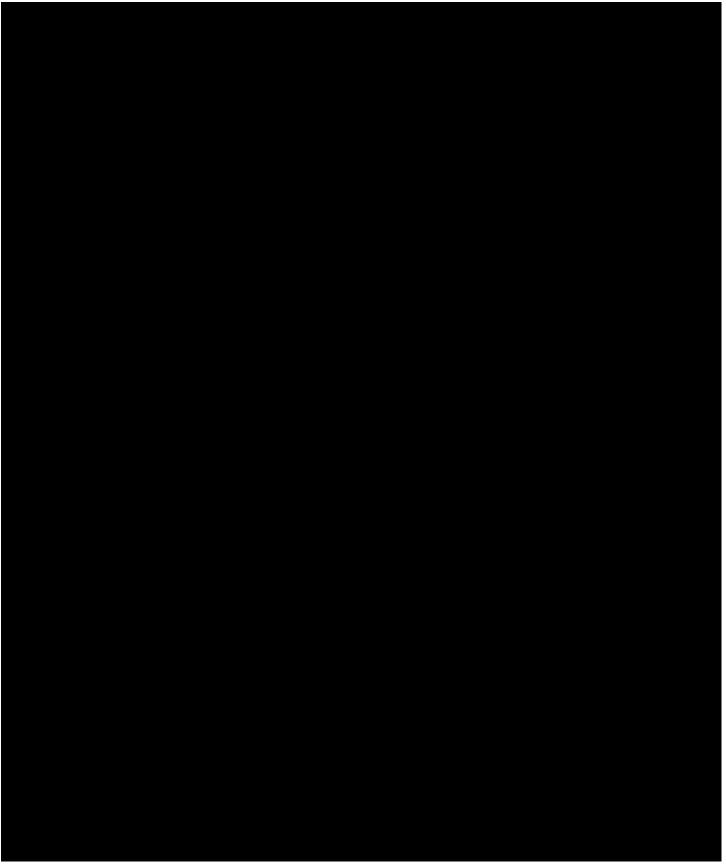




EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

- (a) Election of SC. As of the Effective Date, Buyer hereby (i) selects Seller to be responsible for the provision of Scheduling Coordinator Services and (ii) consents to allowing Wellhead Power Exchange, LLC ("WPX") to be the Scheduling Coordinator for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. Commencing on the Commercial Operation Date, Buyer will pay Seller \$10,000 per month in arrears for Scheduling Coordinator Services for each month WPX remains the Facility SC. Such services will include, but not be limited to, bid optimization to maximize Buyer revenues in coordination with and subject to approval by Buyer, subject to the Operating Restrictions and the CAISO Tariff. The Parties shall enter into good faith negotiations to agree on necessary amendments to this Agreement, if any, to effectuate the selection of Seller as responsible for Scheduling Coordinator Services and WPX as the Facility SC so long as such amendment will not require approval by Buyer's board of directors. Such negotiations shall be limited to necessary amendments related to the Scheduling Coordinator Services for the Facility and shall, to the greatest extent possible, maintain the relative benefits, burdens, and obligations under this Agreement. Buyer shall have the right to revoke its selection of Seller as the responsible Party for Scheduling Coordinator Services and remove WPX as the Facility SC at any time and at Buyer's sole discretion, (1) if WPX fails, in the sole opinion of Buyer, to adequately perform the Scheduling Coordinator Services, or (2) if Buyer elects to revoke the selection for any cost related reasons. Such revocation will become effective [sixty (60) days] after Buyer provides notice to Seller of its revocation pursuant to this clause (a) (the "Change in SC Effective Date"). If such a revocation occurs, Buyer or Buyer's agent will become the Facility SC.
- Buyer as Scheduling Coordinator for the Facility. If pursuant to clause (a) (b) immediately above, Buyer elects to be the Facility SC or designates a qualified third party to provide Scheduling Coordinator Services with the CAISO for the Facility at least thirty (30) days prior to the Change in SC Effective Date, (i) Seller shall take all commercially reasonable 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 Change in SC Effective Date, 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 Change in SC Effective Date through the termination or expiration of the Delivery Term. On or after the Change in SC Effective Date, 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. From and after the Change in SC Effective Date, the Facility 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 shall 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, or transmission to the personnel designated to receive such information.

- (c) <u>Scheduling Coordinator Services</u>. The Facility 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, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer (the "<u>Scheduling Coordinator Services</u>").
- CAISO Costs and Revenues. Buyer shall be responsible for CAISO costs, charges (d) and penalties (including Buyer Charging Energy, penalties, Imbalance Energy costs or revenues when related to Buyer Charging Energy or Buyer Discharging Energy, and other charges) that do not result from Seller exercising Seller's Dispatch Rights and shall be entitled to all CAISO revenues (including Buyer Discharging Energy, credits, Imbalance Energy revenues or costs when related to Buyer Charging Energy or Buyer Discharging Energy, and other payments) that do not result from Seller exercising Seller's Dispatch Rights, 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 Delivery Point and Buyer Charging Energy delivered to the Delivery Point; provided, however, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) 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, if Buyer or Buyer's agent is the Facility SC), (ii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer, or (iii) resulting from Seller exercising Seller's Dispatch Rights. 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 (except to the extent such Non-Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility, if Buyer or Buyer's agent is the Facility SC). 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.
- (e) <u>CAISO Settlements</u>. The Facility SC shall be responsible for all settlement functions with the CAISO related to the Facility. The Facility SC shall render a separate invoice to each of Seller and Buyer for any CAISO payments, charges or penalties ("<u>CAISO Charges Invoice</u>") for which such Party 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, each Party acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. The Facility SC shall review, validate, and if requested by a Party under clause (f) below, dispute any charges that are the responsibility of such Party in a timely manner and consistent with the Facility SC's existing settlement processes for charges. Subject to each Party's right to dispute and to have the

Facility SC pursue the dispute of any such invoices, the disputing Party shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of such Party's receipt of the CAISO Charges Invoice. If a Party fails to pay such CAISO Charges Invoice within that period, the Facility SC may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to the other Party under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

- (f) <u>Dispute Costs</u>. The Facility SC may be required by either Party to dispute CAISO settlements in respect of the Facility. Such Party agrees to pay the Facility SC'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 the disputing Party with respect to the Facility that the disputing Party has directed the Facility SC to dispute, except to the extent such dispute arises from the Facility Party's failure to perform its duties as Scheduling Coordinator for the Facility.
- (g) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. If Buyer or its agent is the Facility SC, 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 its agent as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (h) <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.
- (i) NERC Reliability Standards. If Buyer is the Facility SC, Buyer shall cooperate reasonably with Seller, or cause its designated Scheduling Coordinator 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, and if applicable, that Buyer (as the Facility SC) or its designated Scheduling Coordinator, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Facility SC) or its designated Scheduling Coordinator, 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 reasonably 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 material 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). Format to be provided by Buyer.
- 15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW 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 f	or each	day in tl	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

FORM OF DAILY AVAILABILITY NOTICE

rading Day:tation:									
	Hour Ending	Available Capacity	Comments						
		(MW)							
	1:00								
	2:00								
	3:00								
	4:00								
	5:00								
	6:00								
	7:00								
	8:00								
	9:00								
	10:00								
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	20:00 21:00								

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 Energy Storage Service Agreement dated ("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 Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [DATE].
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on[DATE]
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on[DATE]
8. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider's tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider's tariff.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this day of, 20
[LICENSED PROFESSIONAL ENGINEER] By: Its:
Date:
Exhibit H - 1

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (" <u>Certification</u> ") of Capacity and Efficiency Rate Test results 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 Energy Storage Service
Agreement dated ("Agreement") by and between [SELLER ENTITY] 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 that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity ofMW AC to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of%, (iii) a Battery Discharging Factor of%, and (iv) an Efficiency Rate of%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this day of, 20
[LICENSED PROFESSIONAL ENGINEER]
By:
Its:
Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

("Selle accord ("Agre	ertification of Construction Start Date (" <u>Certification</u> ") is delivered by [SELLER ENTITY] er") to San Diego Community Power, a California joint powers authority (" <u>Buyer</u> ") in lance with the terms of that certain Energy Storage Service Agreement dated <u>eement</u> ") by and between Seller and Buyer. All capitalized terms used in this Certification t otherwise defined herein shall have the respective meanings assigned to such terms in the ment.
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:
	(such description shall amend the description of the Site in Exhibit A of the Agreement.)
	TNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as day of
[SELL	LER ENTITY]
By:	
Its:	

Date:_____

EXHIBIT K

Form of Letter of Credit

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT LETTER OF CREDIT NUMBER: [●]

ISSUANCE DATE: [●]

EXPIRATION DATE: [●]

PLACE OF EXPIRY: [●]

ISSUING BANK:

 $\lceil \bullet \rceil$

BENEFICIARY:

 $[\bullet]$

APPLICANT:

 $[\bullet]$

AVAILABLE AMOUNT: USD [●] (UNITED STATES DOLLARS [●])

LADIES AND GENTLEMEN:

WE, [•], (THE "BANK") HEREBY ESTABLISHES THIS IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT NO. [●] ("LETTER OF CREDIT") IN FAVOR OF [•] (THE "BENEFICIARY"), FOR THE ACCOUNT OF [•], A [●] LIMITED LIABILITY CORPORATION (THE "APPLICANT"), FOR THE AMOUNT STATED ABOVE (THE "AVAILABLE AMOUNT"), EFFECTIVE IMMEDIATELY.

THIS LETTER OF CREDIT SHALL BE OF NO FURTHER FORCE OR EFFECT AT 5:00 P.M., NEW YORK TIME ON THE EXPIRATION DATE STATED ABOVE OR, IF SUCH DAY IS NOT A BUSINESS DAY (AS HEREINAFTER DEFINED), ON THE NEXT BUSINESS DAY (AS MAY BE EXTENDED PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT) (THE "EXPIRATION DATE").

FOR THE PURPOSE HEREOF, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN:

- 1. A SATURDAY OR A SUNDAY.
- 2. A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO REMAIN CLOSED, OR

Exhibit K - 1

3. A DAY ON WHICH THE PAYMENT SYSTEM OF THE FEDERAL RESERVE SYSTEM IS NOT OPERATIONAL.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ONE (1) YEAR FROM THE EXPIRATION DATE HEREOF OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE, THE BANK HAS SENT BENEFICIARY WRITTEN NOTICE BY CERTIFIED MAIL OR OVERNIGHT COURIER, AT THE ADDRESS STATED BELOW, THAT THE BANK ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR ANY SUCH ADDITIONAL PERIOD. NO PRESENTATION MADE UNDER THIS LETTER OF CREDIT AFTER SUCH EXPIRATION DATE WILL BE HONORED.

SUBJECT TO THE TERMS AND CONDITIONS HEREIN, FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY BY COMPLYING PRESENTATION ON OR BEFORE 5:00 P.M. NEW YORK TIME, ON OR BEFORE THE THEN CURRENT EXPIRATION DATE OF THE FOLLOWING:

- 1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENTS, OR A COPY OF SUCH DOCUMENTS IN THE CASE OF PARTIAL DRAWINGS,
- 2. A DRAWING CERTIFICATE ISSUED IN THE FORM OF ATTACHMENT "A" ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND BEARING THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY SIGNING AS SUCH, AND
- 3. A SIGHT DRAFT IN THE FORM OF ATTACHMENT "B" ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND BEARING THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY.

DRAWINGS MAY ALSO BE PRESENTED AS A PDF ATTACHMENT TO AN EMAIL TO [BANK EMAIL ADDRESS] OR BY FACSIMILE TRANSMISSION ("FAX") TO FAX NUMBER [●] OR SUCH OTHER NUMBER AS SPECIFIED FROM TIME-TO-TIME BY THE BANK WITH TELEPHONE CONFIRMATION BY THE BENEFICIARY TO THE BANK AT [●] OR [●], OR SUCH OTHER NUMBERS AS SPECIFIED FROM TIME-TO-TIME BY THE BANK. BENEFICIARY'S FAILURE TO SEEK SUCH A TELEPHONE CONFIRMATION DOES NOT AFFECT THE BANK'S OBLIGATION TO HONOR SUCH A PRESENTATION. THE EMAIL OR FACSIMILE TRANSMITTAL SHALL BE DEEMED DELIVERED WHEN RECEIVED. IT IS UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY EMAIL OR FAX, THE ORIGINAL DOCUMENTS SHOULD NOT ALSO BE PRESENTED.

PARTIAL DRAWING OF FUNDS SHALL BE PERMITTED UNDER THIS LETTER OF CREDIT, AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT

WITH RESPECT TO ANY CONTINUING BALANCE, PROVIDED, THE AVAILABLE AMOUNT SHALL BE REDUCED BY THE AMOUNT OF EACH SUCH DRAWING PAID HEREUNDER.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE OR ASSIGNABLE. ANY PURPORTED TRANSFER OR ASSIGNMENT SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL CORRESPONDENCE AND ANY DRAWINGS (OTHER THAN THOSE MADE BY FACSIMILE) HEREUNDER ARE TO BE DIRECTED TO [•]. ATTN: [•].

ALL NOTICES TO BENEFICIARY WILL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED MAIL OR OVERNIGHT COURIER TO: [•], MANAGER OF RISK OPERATIONS AND COLLATERAL MANAGEMENT, [•]. [•]. 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.

BANKING CHARGES SHALL BE THE SOLE RESPONSIBILITY OF THE APPLICANT.

THIS LETTER OF CREDIT SETS FORTH IN FULL OUR OBLIGATIONS AND SUCH OBLIGATIONS SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED OR LIMITED BY REFERENCE TO ANY DOCUMENTS, INSTRUMENTS OR AGREEMENTS REFERRED TO HEREIN, EXCEPT ONLY THE ATTACHMENT REFERRED TO HEREIN, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE BY REFERENCE ANY DOCUMENT, INSTRUMENT OR AGREEMENT EXCEPT FOR SUCH ATTACHMENT. EXCEPT IN THE CASE OF AN INCREASE IN THE AVAILABLE AMOUNT OR EXTENSION OF THE EXPIRATION DATE, THIS LETTER OF CREDIT MAY NOT BE AMENDED OR MODIFIED WITHOUT THE BENEFICIARY'S PRIOR WRITTEN CONSENT.

THE BANK ENGAGES WITH THE BENEFICIARY THAT BENEFICIARY'S DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED IF PRESENTED TO THE BANK ON OR BEFORE THE EXPIRATION DATE.

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.

[•]
AUTHORIZED SIGNATURE FOR BANK

BY:		
NAME:	•	<u> </u>
TITLE:		

ATTACHMENT ADRAWING CERTIFICATE

TO: [•] [•] [•] ATTN: [•]
IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT REFERENCE NUMBER: [●] DATE: (INSERT DATE OF ISSUE)
[•] (THE "BENEFICIARY"), DEMANDS [•], (THE "BANK") PAYMENT TO THE ORDER OF THE BENEFICIARY THE AMOUNT OF USD (INSERT AMOUNT) (INSERT AMOUNT IN WORDS U.S. DOLLARS), DRAWN UNDER THE LETTER OF CREDIT REFERENCED ABOVE (THE "LETTER OF CREDIT"), FOR THE FOLLOWING REASON(S) (CHECK APPLICABLE PROVISION):
()A. AN EVENT OF DEFAULT, AS DEFINED IN THAT CERTAIN [●] AGREEMENT BETWEEN [•] OR ITS SUCCESSOR (THE "APPLICANT") AND BENEFICIARY, DATED AS OF [●] (AS MAY BE AMENDED FROM TIME TO TIME) (THE "AGREEMENT") WITH RESPECT TO THE APPLICANT HAS OCCURRED AND IS CONTINUING.
()B. THE LETTER OF CREDIT WILL EXPIRE IN FEWER THAN [●] BUSINESS DAYS (AS DEFINED IN THE AGREEMENT) FROM THE DATE HEREOF, AND THE APPLICANT OR ITS SUCCESSOR HAS NOT PROVIDED BENEFICIARY ALTERNATIVE FINANCIAL SECURITY ACCEPTABLE TO BENEFICIARY.
()C. BENEFICIARY IS ENTITLED TO RETAIN ALL OR PART OF THE PROJECT SECURITY (AS DEFINED IN THE AGREEMENT).
UNLESS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS WHICH ARE USED AND NOT DEFINED HEREIN SHALL HAVE THE MEANING GIVEN EACH SUCH TERM IN THE LETTER OF CREDIT. AUTHORIZED SIGNATURE FOR BENEFICIARY:
[•]

NAME: (PRINT NAME)

TITLE: (PRINT TITLE)

ATTACHMENT B SIGHT DRAFT

TO: [•] [•] [•] [•]
DATE: (INSERT ISSUE DATE)
PAY AT SIGHT TO THE ORDER OF [•] (THE "BENEFICIARY") THE AMOUNT OF (USD INSERT AMOUNT) (AMOUNT IN WORDS)
DRAWN UNDER $[ullet]$, IRREVOCABLE NON-TRANSFERABLE STANDY LETTER OF CREDIT NUMBER $[ullet]$ ISSUED ON $[ullet]$
FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH THE FOLLOWING INSTRUCTIONS:
(INSERT WIRING INSTRUCTION)
AUTHORIZED SIGNATURE
[•]
BY:
NAME: (PRINT NAME)
TITLE: (PRINT TITLE)

EXHIBIT L [RESERVED]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

[], a California jo certain Energy Storage S Seller and Buyer. All cap	Notice (this " <u>Notice</u> ") is de oint powers authority (" <u>Bi</u> Service Agreement dated _ oitalized terms used in this nings assigned to such terms	uver") in accordar ("Agr Notice but not other	nce with the terms of that reement") by and between erwise defined herein shall
Pursuant to Section 3.5 product information: <u>Unit Information</u> ¹	of the Agreement, Seller	hereby provides th	e below Replacement RA
Name			
Location			
CAISO Resource ID			
Unit SCID			
Prorated Percentage of Unit Factor			
Resource Type			
Point of Interconnection with the C	AISO		

1 on to the connection with the calso	
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		

Exhibit M - 1

 $^{^{\}mathbf{1}}$ To be repeated for each unit if more than one.

By:			
By: Its:			
Date:			

[SELLER ENTITY]

EXHIBIT N

NOTICES

NORTH JOHNSON ENERGY CENTER,	SAN DIEGO COMMUNITY POWER
LLC	("Buyer")
("Seller")	
All Notices:	All Notices:
Street: 650 Bercut Dr. Suite C	PO Box 12716
City: Sacramento, CA 95811	San Diego, CA 92112
Attn: Hal Dittmer	Attn: Chief Commercial Officer
	Phone: (619) 657-0422
Phone: 916-447-5171	Email:
Email: Contracts@wellhead.com	powercontracts@sdcommunitypower.org
Reference Numbers:	Reference Numbers:
Duns: [To be Updated]	Duns:
Federal Tax ID Number: [To be Updated]	Federal Tax ID Number:
Invoices:	Invoices:
Attn: Accounting department	Attn: SDCP Settlements
Phone: 916-447-5171	Phone: (619) 880-6545
Email: settlements@wellhead.com	Email: settlements@sdcommunitypower.org
Scheduling:	Scheduling:
Attn: 24 Hour Operations	Tenaska Power Services Co.
Phone: 916-447-5171	Attn: Kara Whillock
Email: 24hrkesk@wellhead.com	Phone: (972) 333-6122
	Email: kwhillock@tnsk.com
	Day Ahead: (817) 303-1115
	Real Time: (817) 303-1852
	Facsimile: (817) 303-1104
Confirmations:	Confirmations:
Attn: 24 Hour Operations	Attn: SDCP Settlements
Phone: 916-447-5171	Phone: (619) 880-6545
Email: 24hrkesk@wellhead.com	Email: settlements@sdcommunitypower.org
Payments:	Payments:
Attn: Accounting department	Attn: Michael Maher
Phone: 916-447-5171	Phone: (415) 526-3020
Email: settlements@wellhead.com	Email: mmaher@mahercpa.com
Wire Transfer: [To be Updated]	Wire Transfer:
BNK:	BNK: River City Bank
ABA:	ABA:
ACCT:	ACCT:

NORTH JOHNSON ENERGY CENTER,	SAN DIEGO COMMUNITY POWER
LLC	("Buyer")
("Seller")	
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
Attn: Gregory Contreras	PO Box 12716
Phone: 916-281-8440	San Diego, CA 92112
	Attn: SDCP General Counsel
Email:gcontreras@wellhead.com	Email: legal@sdcommunitypower.org
Emergency Contact: [To be Updated]	Emergency Contact:
Attn:	Attn: Chief Commercial Officer
Phone:	Phone: (619) 657-0422
Email:	Email:
	powercontracts@sdcommunitypower.org

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

- A. <u>Commercial Operation Capacity Test(s)</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 6 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).
- B. <u>Subsequent Capacity Tests</u>. Following the Commercial Operation Date, at least 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 Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any 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 Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test 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 Capacity Test is sometimes referred to in this <u>Exhibit O</u> as a "<u>CT</u>". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) <u>Communications</u>. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) <u>Commissioning Checklist</u>. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- A. <u>Test Elements</u>. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this <u>Exhibit O</u>, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this <u>Exhibit O</u>.
 - (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed six (6) hours of total charging time.
- B. <u>Parameters</u>. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at the specified intervals:
 - (1) Time in 1-minute intervals;

- (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter) in 5-minute intervals;
- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter) in 5-minute intervals; and
- (4) Stored Energy Level (MWh) in 1-minute intervals.
- C. <u>Site Conditions</u>. During each CT, 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 Facility; and
 - (3) Ambient air temperature (°F).
- D. <u>Test Showing</u>. Each CT shall record and report the following datapoints:
 - (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for six (6) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Intentionally Omitted;
 - (5) Intentionally Omitted;
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

(1) <u>General</u>. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.

- (2) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. <u>Incomplete Test</u>. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. <u>Test Report</u>. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
 - (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. <u>Supplementary 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) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("<u>Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. <u>Adjustment to Effective Capacity and Efficiency Rate</u>. The Effective Capacity and Efficiency Rate shall be updated as follows:
 - (1) 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) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 6 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
 - (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) six (6) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) six (6) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.

- (6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

• Test Results:

- (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy after 4 hours of continuous discharging at the Facility Meter divided by four (4) hours.
 - The starting interval of the Capacity Test is the first 5-minute interval for which the output is above 99% of the commanded discharge output.
 - The ending interval of the Capacity Test is the 5-minute interval that ends 4 hours after the commencement of the starting interval.
- (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Capacity Test.

The starting interval of the Efficiency Rate test is the interval before the first 5-minute interval for which the output is above 99% of the commanded

discharge output.

The ending interval of the Efficiency Rate test is the interval after the last 5-minute interval for which the output is above 99% of the commanded discharge output.

- B. **Intentionally Omitted**.
- C. **Intentionally Omitted**.
- D. **Intentionally Omitted**.
- E. Intentionally Omitted.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the "Monthly Capacity Availability" from the Commercial Operation Date through the RA Guarantee Date and thereafter for each given month of the Delivery Term using the formula set forth below:

 $Monthly Capacity Availability (\%) = \frac{[AVAILHRS_m + EXCUSEDHRS_m]}{[MONTHRS_m]}$

Where:

m = relevant month "m" in which Monthly Capacity 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 Facility was available to charge and discharge Energy between the 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 Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective 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 capacity amount reported as available by Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

EXCUSEDHRS_m is the total number of hours, or partial hours, in the month that are not included as AVAILHRS_m due to Buyer Default, the failure of the Facility SC to comply with the CAISO Tariff, Force Majeure Events (excluding Insurable Force Majeure Events), periods during which the receipt of Charging Energy or delivery of Discharging Energy is prevented due to a Curtailment Order, Buyer Dispatched Tests, Approved Maintenance Outages, CAISO approved Short Term Opportunity Outages (as that term is defined in the CAISO Tariff), or the Operating Restrictions in Exhibit Q (each, an "Excused Event"). If an Excused Event results in less than the full amount of the Effective Capacity for the 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 such Effective Capacity amount that is not reported as available by (i) Seller's real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the For avoidance of doubt, the total of AVAILHRS_m plus Effective Capacity.

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.

EXHIBIT Q OPERATING RESTRICTIONS



Regulation down is included:	Yes
Black start is included:	No
Voltage support is included:	Yes

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

Exhibit S - 1

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

Exhibit S - 2

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

CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this "Consent") is entered into as of ______, 2025 (the "Effective Date") by and among (i) San Diego Community Power, a California joint powers authority ("SDCP"), (ii) Chula Vista Energy Center 2, LLC, a Delaware limited liability company ("Project Company"), and (iii) [•], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the "Secured Parties", and, such agent, together with its successors in such capacity, "Collateral Agent"). SDCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the Agreement (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and SDCP have entered into that certain Energy Storage Service Agreement, dated as of [•] (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"), pursuant to which Project Company has been developing, constructing, commissioning, testing and operating the Project and will sell the Product to SDCP, and SDCP will purchase the Product from Project Company;
- B. As collateral for Project Company's obligations under the Agreement, Project Company has agreed to provide to SDCP certain collateral, which may include Performance Assurance and Security Interests and other collateral described in the Agreement (collectively, the "Agreement Collateral");
- C. Project Company has entered into that certain Financing Agreement, dated as of January [__], 2024, among Project Company, the financial institutions from time to time party thereto as lenders and as issuers of letters of credit (together with their respective successors and assigns, collectively, the "Lenders"), [•], in its capacity as Administrative Agent, and [•], in its capacity as Collateral Agent (as the same may be amended, modified, restated or supplemented and as in effect from time to time, the "Financing Agreement"), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company's obligations under the Financing Agreement and related agreements (collectively, the "Financing Documents"), Project Company has, among other things, assigned all of its right, title and interest in, to and under the Agreement and Project Company's owners have pledged their ownership interest in Project Company (collectively, the "Assigned Interest") to Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the Agreement that SDCP and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

ARTICLE 1

CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

SDCP hereby acknowledges:

notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the Agreement (subject to SDCP's rights and defenses under the Agreement and the terms of this Consent) and accepts any such exercise; provided, however, that, insofar as Collateral Agent exercises any such rights under the Agreement or makes any claims with respect to payments or other obligations under the Agreement, the terms and conditions of the Agreement applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SDCP is authorized to act in accordance with Collateral Agent's instructions, and that SDCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SDCP to terminate or suspend its performance under the Agreement (an "Agreement Default"), SDCP will not terminate or suspend its performance under the Agreement until it first gives written notice of such Agreement Default to Collateral Agent and affords Collateral Agent the right to cure such Agreement Default within the applicable cure period under the Agreement, which cure period shall run concurrently with that afforded Project Company under the Agreement. In addition, if Collateral Agent gives SDCP written notice prior to the expiration of the applicable cure period under the Agreement of Collateral Agent's intention to cure such Agreement Default (which notice shall include a reasonable description of the time during which it anticipates to cure such Agreement Default) and is diligently proceeding to cure such Agreement Default, notwithstanding the applicable cure period under the Agreement, Collateral Agent shall

have a period of sixty (60) days (or, if such Agreement Default is for failure by the Project Company to pay an amount to SDCP which is due and payable under the Agreement other than to provide Agreement Collateral, thirty (30) days, or, if such Agreement Default is for failure by Project Company to provide Agreement Collateral, five (5) Business Days) from the Collateral Agent's receipt of the notice of such Agreement Default from SDCP to cure such Agreement Default; provided, however, that (a) if possession of the Project is necessary to cure any such nonmonetary Agreement Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the Agreement Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the Agreement Default, to complete such proceedings and cure such Agreement Default, and (b) if Collateral Agent is prohibited from curing any such Agreement Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing an Agreement Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide SDCP with reports concerning the status of efforts to cure an Agreement Default upon SDCP's reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") SDCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the Agreement, and, subject to Sections 1.7(b) and 1.7(c) below, SDCP and Substitute Owner will recognize each other as counterparties under the Agreement and will continue to perform their respective obligations (including those obligations accruing to SDCP and the Project Company prior to the existence of the Substitute Owner) under the Agreement in favor of each other in accordance with the terms thereof; provided, however, that before SDCP is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to SDCP's reasonable satisfaction that the Substitute Owner has (i) a minimum tangible net worth of at least \$[•] and (ii) at least three (3) years of experience operating a generating plant of similar technology and similar size (or has retained a third party with such operating experience) (such person or entity, a "Permitted Transferee"). For purposes of the foregoing, SDCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the Agreement is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the Agreement is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project

Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), SDCP shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the Agreement remaining to be performed having terms substantially the same as the terms of the Agreement with respect to the remaining Term ("Replacement Agreement"); provided, that before SDCP is required to enter into a Replacement Agreement, the Replacement Owner must have demonstrated to SDCP's reasonable satisfaction that the Replacement Owner satisfies the requirements to be a Permitted Transferee. For purposes of the foregoing, SDCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Replacement Owner provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement Agreement, to the extent SDCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the Agreement, SDCP may suspend performance of its obligations under such Replacement Agreement, unless and until all Agreement Defaults of Project Company under the Agreement or Replacement Agreement have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the Agreement and a Replacement Agreement to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Project is transferred; provided, however, that the proposed transferee shall have demonstrated to SDCP's reasonable satisfaction that such proposed transferee satisfies the requirements to be a Permitted Transferee.

1.7 Assumption of Obligations.

Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to SDCP all of the obligations of Project Company, Substitute Owner or Replacement Owner under the Agreement or Replacement Agreement, as applicable, including posting and collateral assignment of the Agreement Collateral. Upon such assignment and the cure of any outstanding Agreement Default, and payment of all other amounts due and payable to SDCP in respect of the Agreement or such Replacement Agreement, the transferor shall be released from any further liability under the Agreement or Replacement Agreement, as applicable.

Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the Agreement, including posting and collateral assignment of the Agreement Collateral; provided, however, that the obligations of such Substitute Owner shall be no more than those of Project Company under the Agreement.

No Liability.

SDCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the Agreement as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the Agreement, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement Agreement, Collateral Agent shall not have any personal liability to SDCP under the Agreement or Replacement Agreement and the sole recourse of SDCP in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, however, that such limited recourse shall not limit SDCP's right to seek equitable or injunctive relief against Collateral Agent, or SDCP's rights with respect to any offset rights expressly allowed under the Agreement, a Replacement Agreement or the Agreement Collateral.

1.8 Delivery of Notices.

SDCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SDCP to Project Company pursuant to the Agreement relating to (a) an Agreement Default, (b) any claim regarding Force Majeure by SDCP under the Agreement, (c) any notice of dispute under the Agreement, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SDCP's obligation to give Collateral Agent a notice of Agreement Default under Section 1.3. Collateral Agent shall deliver to SDCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

SDCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the Agreement (including the performance of the same by Project Company); provided, however, that such confirmation may be limited to matters of which SDCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SDCP under the Agreement as between SDCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9, and 2.1, unless and until SDCP receives a Financing Document Default Notice, SDCP shall deal exclusively with Project Company in connection with the performance of SDCP's obligations under the Agreement. From and after such time as SDCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement Agreement is entered into

or the Agreement is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, SDCP shall, until Collateral Agent confirms to SDCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SDCP's obligations under the Agreement, and SDCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by applicable Laws, SDCP agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the Agreement, (b) terminate or suspend its performance under the Agreement (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the Agreement by Project Company.

ARTICLE 2

PAYMENTS UNDER THE AGREEMENT

2.1 Payments.

Unless and until SDCP receives written notice to the contrary from Collateral Agent, SDCP will make all payments to be made by it to Project Company under or by reason of the Agreement directly to Project Company. SDCP, Project Company, and Collateral Agent acknowledge that SDCP will be deemed to be in compliance with the payment terms of the Agreement to the extent that SDCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by [•] under the Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SDCP

SDCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

SDCP is a joint powers authority and community choice aggregator duly organized and validly existing 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 its jurisdiction. SDCP has all requisite power and authority, corporate and otherwise, to enter into and to perform

its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by SDCP of this Consent and the Agreement have been duly authorized by all necessary corporate or other action on the part of SDCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SDCP which, if not obtained, will prevent SDCP from performing its obligations hereunder or under the Agreement except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the Agreement is in full force and effect, have been duly executed and delivered on behalf of SDCP by the appropriate officers of SDCP, and constitute the legal, valid and binding obligation of SDCP, enforceable against SDCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither SDCP nor, to SDCP's actual knowledge, Project Company, is in default of any of its obligations under the Agreement; (b) SDCP and, to SDCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the Agreement; (c) to SDCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the Agreement; and (d) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

SDCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the Agreement, except as previously disclosed in writing and consented to by SDCP.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of Collateral Agent and SDCP:

4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's collateral assignment of its right, title and interest in, to and under the Agreement to Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, SDCP, is in default of any of its obligations under the Agreement; (b) Project Company and, to Project Company's actual knowledge, SDCP, has complied with all conditions precedent to the effectiveness of its obligations under the Agreement; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SDCP or Project Company to terminate or suspend its obligations under the Agreement; and (d) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SDCP and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

ARTICLE 6

MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the Agreement (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SDCP or Project Company, in accordance with Section 9.1 of the Agreement, (b) if to Collateral Agent to the contact information provided below, or (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

- [●], as Collateral Agent
- $[\bullet]$
- [•]

Attention: [•]

Telephone: [•]

Email: [•]

6.2 Governing Law; Submission to Jurisdiction.

THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the Agreement. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by SDCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SDCP has been notified by Collateral Agent that [SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT – ESSA]

all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the Agreement or any Replacement Agreement, its obligations under such Agreement or Replacement Agreement have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assigns permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

SDCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

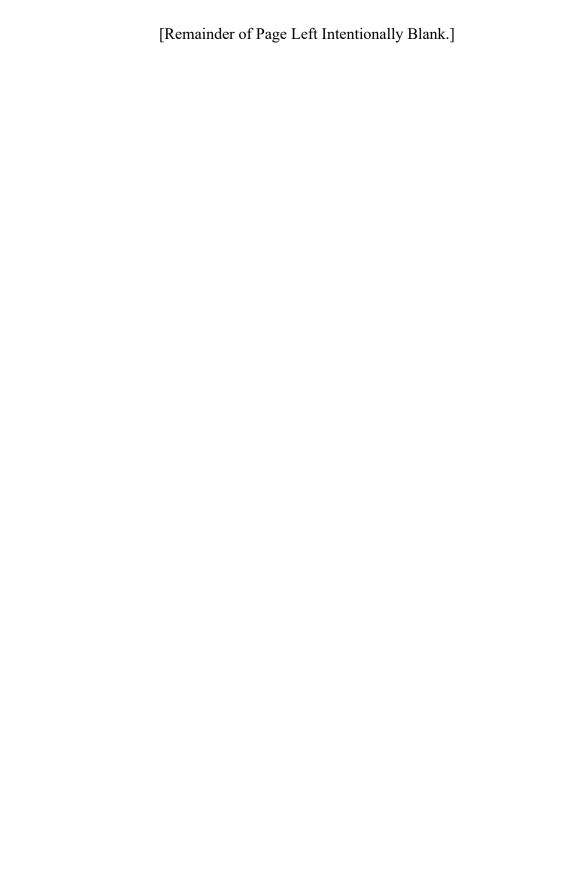
6.11 Effective Date.

This Consent shall be deemed effective as of the Effective Date.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT – ESSA]



IN WITNESS WHEREOF, the Parties and delivered by their duly authorized officers	s hereto have caused this Consent to be duly executed s as of the Effective Date.
	SAN DIEGO COMMUNITY POWER, a California ioint powers authority

CHULA VISTA ENERGY CENTER 2, LLC a Delaware limited liability company	
By: Name: Title:	

[•], as Collateral Agent
By: Name: Title:

SCHEDULE A

None.

SCHEDULE B

None.



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.