



AGENDA

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

January 28, 2021

5:00 p.m.

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

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

1. **Written Comments.** All written comments received at least one (1) hour before the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments received after the one (1) hour limit will be collected, sent to the Board members in writing, and be part of the public record.
2. **Requests to Speak.** Members of the public who have requested to speak at least one (1) hour before the meeting will be recognized at the appropriate time during the meeting. To allow the Chair to call on you, please provide the following minimum information with your request to speak: your name (if attending by videoconference) or telephone number (if attending by phone).

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

The public may participate using the following remote options:

Teleconference Meeting Webinar

<https://zoom.us/j/94794075133>

Telephone (Audio Only)

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

Welcome

Call to Order

Pledge of Allegiance

Roll Call

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

Public Comments

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

Consent Calendar

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

- 1. Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on December 17, 2020.**

REGULAR AGENDA

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

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

Recommendation:

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

- 3. Committee Reports**

Recommendation: Receive and file update from the Community Advisory Committee.

- 4. Treasurer's Report**

Recommendation: Receive and file presentation of financial results for 2020/21 period ending 11/30/20.

5. Receive FY2020 Audited Financial Statements from Pisenti & Brinker

Recommendation: Receive and file report.

6. Adopt Resolution Granting the Interim Chief Executive Officer the Authority to Execute an Amendment with River City Bank

Recommendation: Adopt Resolution 2021-01 granting the Interim Chief Executive Officer authority to execute an amendment with River City Bank regarding technical modifications to the Credit Agreement to address changes to SDCP's fiscal year, pro-forma and phasing schedule.

7. Adopt Resolution Approving SDG&E Master Power Purchase and Sales Agreement

Recommendation: Adopt Resolution 2021-02 approving a Master Power Purchase and Sale Agreement with San Diego Gas & Electric and authorizing the Interim Chief Executive Officer to execute the agreement and related documents.

8. Adoption of a Feed-In Tariff Schedule, Application, and Update to Inclusive and Sustainable Workforce Policy

Recommendation:

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

Director Comments

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

Reports by Management and General Counsel

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

ADJOURNMENT

Compliance with the Americans with Disabilities Act

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

accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Previously, public records were available for inspection at the City of San Diego Sustainability Department, located at 1200 Third Ave., Suite 1800, San Diego, CA 92101. However, due to the Governor's Executive Orders N-25-20 and N-29-20 and the need for social distancing, in-person inspection is now suspended. Public records, including agenda-related documents, can instead be requested electronically at info@sdcommunitypower.org or by mail to SDCP, 815 E Street, Suite 12716, San Diego, CA 92112. The documents may also be posted at the above website.



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

MINUTES

December 17, 2020

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

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

The Agenda Items were considered in the order presented, except the Call to Order was done prior to the Welcome and Oath of Office for Director Dedina.

WELCOME AND OATH OF OFFICE FOR MAYOR SERGE DEDINA

Interim Board Clerk Wiegelman administered the Oath of Office to Director Dedina (Imperial Beach).

CALL TO ORDER

Chair Mosca (Encinitas) called the SDCP Board of Directors meeting to order at 5:10 p.m.

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

PLEDGE OF ALLEGIANCE

Chair Mosca (Encinitas) led the Pledge of Allegiance.

ROLL CALL

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

ABSENT: None

Also Present: Interim Chief Executive Officer (“CEO”) Carnahan, Chief Operating Officer (“COO”) Hooven, General Counsel Baron, Interim Board Clerk Wiegelman

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

Chair Mosca announced that Item 10 was withdrawn from the agenda and would be considered at a future meeting.

PUBLIC COMMENTS

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

Matthew Vasilakis, Climate Action Campaign, submitted a comment welcoming Director Dedina (Imperial Beach) to SDCP and regarding San Diego Gas & Electric’s (“SDG&E”) continued efforts to undermine SDCP’s establishment.

CONSENT CALENDAR

(Items 1 through 4)

- 1. Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on November 19, 2020**

Approved.

- 2. Approval of a Social Media Policy**

Approved.

- 3. Approval of a Customer Data Confidentiality Policy**

Approved.

- 4. Approval of the 2021 Board Meeting Schedule by Resolution**

Resolution No. 2020-08 was adopted.

ACTION: Motioned by Director Montgomery (San Diego) and seconded by Vice Chair Padilla (Chula Vista) to approve Consent Calendar Items 1 through 4. The motion carried by the following vote:

Vote: 5-0

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

REGULAR AGENDA

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

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

Mark West (Imperial Beach) reflected on his time on the SDCP Board of Directors and expressed his appreciation for the other Directors, staff, and the organization as a whole.

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

Matthew Vasilakis, Climate Action Campaign, submitted a comment thanking Director West (Imperial Beach) for his leadership and efforts at SDCP.

ACTION: Motioned by Director Dedina (Imperial Beach) and seconded by Vice Chair Padilla (Chula Vista) to adopt Resolution No. 2020-09 recognizing Mark West as a Founding Board Member of San Diego Community Power. The motion carried by the following vote:

Vote: 5-0

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

No: None

Abstained: None

Absent: None

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

Interim CEO Carnahan provided an update on the status of the various vendor requests for proposals (“RFP”) and other solicitations, the Community Choice Energy Forum hosted by Climate Action Campaign on December 4, 2020, the implementation of the organization plan, and the hiring and recruitment efforts. Interim CEO Carnahan announced Sebastian Sarria had been hired as the Program and Policy Manager and Kimberly Isley had been hired as the Executive Assistant.

COO Hooven provided an update on the policy matrix.

Ty Tosdal, Tosdal APC, provided an update on SDG&E’s Energy Resource Recovery Account (“ERRA”) forecasting proceedings, the Financial Security Requirements for CCAs, SDG&E’s Power Charge Indifference Adjustment (“PCIA”) Trigger application, and other energy regulatory affairs as they relate to the interests of SDCP.

Following Board questions and comments, no action was taken.

7. Committee Reports

Interim CEO Carnahan provided an update on the proceedings of the Finance and Risk Management Committee.

Board questions and comments ensued.

Community Advisory Committee (“CAC”) Vice Chair Hammond provided an update on the proceedings of the CAC.

Following Board questions and comments, no action was taken.

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

Interim CEO Carnahan and Michael Myers, Maher Accountancy, provided a report on the finances of the first quarter of Fiscal Year 2020-2021 and explained how the financial reports would be presented to the Board moving forward.

Board questions and comments ensued.

Following Board questions and comments, no action was taken.

9. Approval of a Net Energy Metering Program

Program and Policy Manager Sarria and Paul Soco, Calpine, provided an overview of the proposed Net Energy Metering (“NEM”) Program and the enrollment process for the NEM Program.

Board questions and comments ensued.

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

Jason Anderson, Cleantech San Diego, submitted a comment in support of the NEM Program.

ACTION: Motioned by Director Baber (La Mesa) and seconded by Director Montgomery (San Diego) to adopt a Net Energy Metering Program pending subsequent approval of Net Surplus Compensation. The motion carried by the following vote:

Vote: 5-0

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

No: None

Abstained: None

Absent: None

10. Approval of a Feed-In Tariff Program

This Item was withdrawn from the agenda.

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

General Counsel Baron provided a PowerPoint presentation on energy contracting, highlighting procurement, commercial transactions, terms and conditions, and process. General Counsel Baron reviewed the proposed Master Power Purchase and Sale Agreements and Lockbox Agreements and explained the purpose for the various agreements.

Board questions and comments ensued.

ACTION: Motioned by Director Dedina (Imperial Beach) and seconded by Vice Chair Padilla (Chula Vista) to: (1) adopt Resolution No. 2020-10 approving a Master Power Purchase Agreement and Sales Confirmation with Southern California Edison and authorizing the Interim CEO to execute the Agreement, Confirmation and related documents; and (2) adopt Resolution No. 2020-11 approving the Edison Electric Institute (EEI) and Western Systems PowerPool (WSPP) Master Purchase and Sale Agreements, approving a Deposit Account Control Agreement, Security Agreement, and Intercreditor and Agency Collateral Agreement (“Lockbox Agreements”) and delegating authority to the CEO to execute the EEI and WSPP Master Agreements and Lockbox Agreements with energy service providers in substantially similar form as approved by General Counsel. The motion carried by the following vote:

Vote: 5-0

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

No: None

Abstained: None

Absent: None

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

The Board discussed which Directors would serve on the Finance and Risk Management Committee.

ACTION: Motioned by Director Baber (La Mesa) and seconded by Chair Mosca (Encinitas) to appoint Director Dedina (Imperial Beach) and Alternate Director Humora (La Mesa) to serve on the Finance and Risk Management Committee until December 2021. The motion carried by the following vote:

Vote: 5-0

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

No: None

Abstained: None

Absent: None

DIRECTOR COMMENTS

There were no comments.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

ADJOURNMENT

Chair Mosca (Encinitas) adjourned the meeting at 6:20 p.m.

Megan Wiegelman, CMC
Interim Board Clerk

San Diego Community Power Board Update

January 28, 2021

The logo for Tosdal Law Firm is set against a yellow rectangular background. It features the letters 'T', a white circle, and 'SDAL' in a bold, dark blue sans-serif font. Below this, the words 'ENERGY & ENVIRONMENTAL LAW' are written in a smaller, dark blue, all-caps sans-serif font.

T • SDAL
ENERGY & ENVIRONMENTAL LAW

Ty Tosdal
Tosdal APC



Overview

- SDG&E 2021 ERRA Forecast ([A. 20-04-014](#))
- SDG&E's 2020 ERRA Trigger ([A. 20-12-007](#))
- 2020 RPS Procurement Plans ([R. 18-07-003](#))
- Percent Income Payment Plan ([R. 18-07-005](#))



SDG&E's 2021 ERRA Forecast Application

- The Alternate Proposed Decision (APD) requiring SDG&E to incorporate departing load into sales forecast was adopted.
- There will be no drastic reduction in SDG&E rates.
- The System Average Percent Change (SAPC) allocation method was adopted.
- SDG&E's advice letter to be issued before February 1, 2021, will provide additional details on rate changes.



SDG&E's 2020 ERRA Trigger

- SDG&E has applied for a modest rate increase.
- San Diego CCAs submitted a Joint Protest on January 5, 2021.
- SDG&E has committed to applying the energy requirements approved in the ERRA Forecast proceeding.
- San Diego CCAs Propose March 4, 2021, Commission Vote for implementation June 1.



2020 RPS Procurement Plans

- SDCP and other CCAs, ESPs and IOUs are ordered to provide additional details to multiple sections of the RPS Plans by February 15, 2021.
- PEA is currently working on the amendments to SDCP's RPS Procurement Plan narrative and RNS calculations.
- SDG&E's request to hold RPS sales solicitations in 2021 is approved.

RPS Progress to Target Comparison

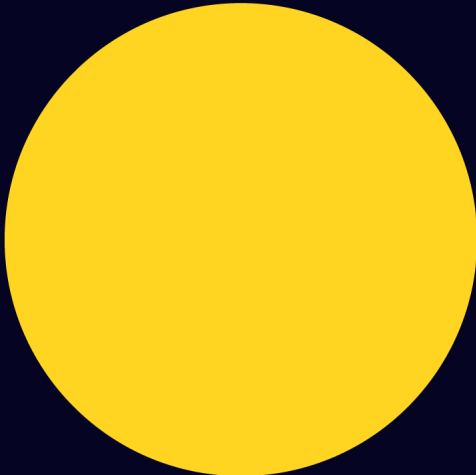


Figure 1: Aggregated IOU Progress Towards 60% RPS

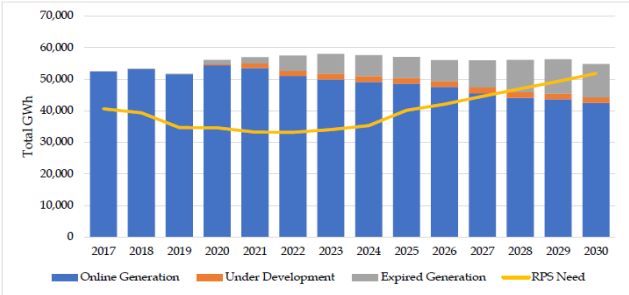
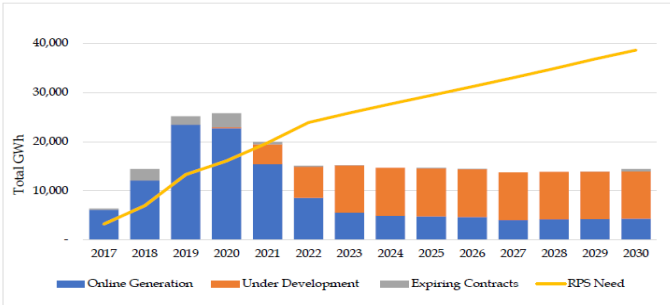


Figure 3: Aggregated CCAs Progress Towards 60% RPS



Source: CPUC Proposed Decision on 2020 RPS Plans, Filed December 11, 2020.



Percentage of Income Payment Plan (PIPP)

- The program aims to assist customers with the lowest income and provides a fixed, minimum bill based on income.
- Party comments reflect wide disagreement regarding PIPP income eligibility and program parameters.
- CalCCA supports PIPP as a 12-18 month pilot for IOUs only and PPP as cost recovery mechanism.
- SDG&E opposes the PIPP program entirely, citing duplicative nature of CARE/FERA and other factors.



Financial Security Requirements

- SDG&E corrected errors in its FRS Advice Letter calculating FSR amounts.
- SDCP and other CCA Program FSR Advice Letters were suspended by the Energy Division because pro forma agreements were attached.
- SDCP will be submitting a revised FSR Advice Letter and a confidential version of the FSR instrument.
- When SDCP's Advice Letter is approved, the interim FSR amount (\$100,000) will be returned.



Supporting Materials

Supporting materials referenced in this presentation can be found at the following link:

https://www.dropbox.com/sh/lqxgw9qspchu1kt/AABDTnzfLeU3VKzaGKj1sT_Za?dl=0



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Bill Carnahan, Interim CEO
CC: Michael Maher, Maher Accountancy
Subject: Treasurer's Report
Date: January 28, 2021

RECOMMENDATION

Receive and file presentation of financial results for 2020/21 period ending 11/30/20.

BACKGROUND

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

SDCP has prepared financial statements for the period ended November 30, 2020 as well as a budgetary comparison statement for the same period.

ANALYSIS AND DISCUSSION

Financial Comments:

- SDCP's main source of funding at this point is its Line of Credit with River City Bank (RCB).
- As planned, SDCP is running a deficit balance and will continue to do so until sufficient revenues from retail customers occur during the latter half of the fiscal year.
- Upcoming financial transactions: January and February 2021 will see pick up in cash outflows related to energy supply collateral and RA purchases. As planned, we anticipate the next phase of the loan funding will be needed to pay these outflows.

Budget Comments:

- Through November 30, 2020 (5 months), total spending of \$998k remains under budget expectations of \$1,070k.
- SDCP management intends to propose a budget amendment at a future date to 1) incorporate new information pertaining to rates and energy costs 2) to reformat the budget report to a condensed and easier to read version.



FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: 2020/21 Period Ended 11/30/20 Financial Statements

Attachment B: 2020/21 Period Ended 11/30/20 Budgetary Comparison Statement





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

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

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

Maher Accountancy

San Rafael, CA
January 15, 2021

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

ASSETS

Current assets	
Cash and cash equivalents	\$ 696,536
Deposits	200,000
Total current assets	<u>896,536</u>
Noncurrent assets	
Restricted cash	5,500,000
Deposits	100,000
Total noncurrent assets	<u>5,600,000</u>
Total assets	<u><u>6,496,536</u></u>

LIABILITIES

Current liabilities	
Accounts payable	342,354
Payroll liabilities	15,336
Other accrued liabilities	100,000
Security deposits	1,581,000
Interest payable	58,872
Total current liabilities	<u>2,097,562</u>
Noncurrent liabilities	
Other noncurrent liabilities	582,176
Bank note payable	990,082
Loans payable	5,000,000
Total noncurrent liabilities	<u>6,572,258</u>
Total liabilities	<u><u>8,669,820</u></u>

NET POSITION

Unrestricted (deficit)	<u>(2,173,284)</u>
Total net position	<u><u>\$ (2,173,284)</u></u>

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

OPERATING REVENUES	\$	-
 OPERATING EXPENSES		
Contract services		823,610
Staff compensation		61,154
General and administration		164,069
Total operating expenses		<u>1,048,833</u>
Operating income (loss)		<u>(1,048,833)</u>
 NONOPERATING EXPENSES		
Interest expense		<u>54,341</u>
 CHANGE IN NET POSITION		
Net position at beginning of period		(1,103,174)
Net position at end of period		<u>(1,070,110)</u>
		<u>\$ (2,173,284)</u>

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

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts of supplier collateral	\$ 1,581,000
Payments for goods and services	(968,500)
Payments to employees for services	(45,818)
Payments for deposits and collateral	(200,000)
Net cash provided (used) by operating activities	366,682

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Interest and related expense payments	(9,128)
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Net change in cash and cash equivalents	357,554
Cash and cash equivalents at beginning of period	5,838,982
Cash and cash equivalents at end of period	\$ 6,196,536

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	696,536
Restricted cash	5,500,000
Cash and cash equivalents	\$ 6,196,536

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
July 1, 2020 through November 30, 2020

**RECONCILIATION OF OPERATING INCOME (LOSS) TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income (loss)	\$ (1,048,833)
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
(Increase) decrease in:	
Prepaid expenses	25,000
Deposits	(200,000)
Increase (decrease) in:	
Accounts payable	12,312
Payroll liabilities	15,336
Other accrued liabilities	(18,133)
Supplier security deposits	1,581,000
Net cash provided (used) by operating activities	<u>\$ 366,682</u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose statement of San Diego Community Power (SDCP), a California Joint Powers Authority, which comprise the budgetary comparison schedule for the period ended November 30, 2020, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

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

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

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

Maher Accountancy

San Rafael, CA
January 15, 2021

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

	2020/21 YTD Budget	2020/21 YTD Actual	2020/21 YTD Budget Variance (Under) Over	2020/21 YTD Actual/ Budget %	2020/21 Annual Budget	2020/21 Budget Remaining
REVENUES AND OTHER SOURCES						
Working capital from River City Bank	\$ 1,500,000	-	\$ (1,500,000)	0%	\$ 24,600,000	\$ 24,600,000
Ratepayer revenues	-	-	-	0%	22,688,892	22,688,892
Less uncollectibles	-	-	-	0%	(56,722)	(56,722)
Total Revenues and Other Sources	<u>1,500,000</u>	<u>-</u>	<u>(1,500,000)</u>		<u>47,232,170</u>	<u>47,232,170</u>
OPERATING EXPENSES						
Operations and Administration						
Professional fees	145,833	128,550	(17,283)	88%	350,000	221,450
Board and Committee Expenses	6,250	-	(6,250)	0%	15,000	15,000
Staffing	70,000	61,154	(8,846)	87%	1,500,000	1,438,846
General and Administrative	145,833	33,883	(111,950)	23%	350,000	316,117
Debt Service and Bank Fees	110,000	54,341	(55,659)	49%	1,048,000	993,659
Total Operations and Administration	<u>477,916</u>	<u>277,928</u>	<u>(199,988)</u>		<u>3,263,000</u>	<u>2,985,072</u>
CAISO/Utility Fees						
CAISO deposit	-	-	-	0%	500,000	500,000
Financial Security Bond (CPUC)	-	-	-	0%	50,000	50,000
SDG&E billing service fees	-	-	-	0%	5,768	5,768
Total CAISO/Utility Fees	<u>-</u>	<u>-</u>	<u>-</u>		<u>555,768</u>	<u>555,768</u>
Technical and Energy Services						
Power contracting, portfolio and rate design	96,250	122,063	25,813	127%	273,000	150,937
Scheduling Fees	-	-	-	0%	8,000	8,000
Cost of Power	-	-	-	0%	32,511,279	32,511,279
Collateral/Lockbox reserves	-	-	-	0%	5,000,000	5,000,000
Total Technical and Energy Services	<u>96,250</u>	<u>122,063</u>	<u>25,813</u>		<u>37,792,279</u>	<u>37,670,216</u>
Communications & Customer Enrollment						
Marketing strategy and branding	65,000	185,205	120,205	285%	65,000	(120,205)
Permanent Website + Maintenance	45,000	-	(45,000)	0%	45,000	45,000
Collateral Design/Video	12,500	-	(12,500)	0%	60,000	60,000
PR/Advertising Campaign	31,250	-	(31,250)	0%	150,000	150,000
Community Engagement	26,042	-	(26,042)	0%	125,000	125,000
Materials for tabling and events (design/print)	6,250	-	(6,250)	0%	30,000	30,000
Customer Notifications (@ \$0.80 each)	10,208	-	(10,208)	0%	49,000	49,000
Community Sponsorships, etc.	25,000	7,500	(17,500)	30%	25,000	17,500
Total Communications & Customer Enrollment	<u>221,250</u>	<u>192,705</u>	<u>(28,545)</u>		<u>549,000</u>	<u>356,295</u>
Legal						
General Counsel Services	50,000	126,132	76,132	252%	120,000	(6,132)
Legal review of power supply & other contracts	50,000	-	(50,000)	0%	120,000	120,000
Total Legal	<u>100,000</u>	<u>126,132</u>	<u>26,132</u>		<u>240,000</u>	<u>113,868</u>
Regulatory Legislative						
Cal-CCA Membership	25,000	17,686	(7,314)	71%	50,000	32,314
Regulatory Monitoring and Reporting	83,333	261,662	178,329	314%	200,000	(61,662)
Participation in Regulatory /Compliance Matters	41,667	-	(41,667)	0%	100,000	100,000
Lobbyist	25,000	-	(25,000)	0%	60,000	60,000
Total Regulatory Legislative	<u>175,000</u>	<u>279,348</u>	<u>104,348</u>		<u>410,000</u>	<u>130,652</u>
Total Operating Expenses	<u>1,070,416</u>	<u>998,176</u>	<u>(72,240)</u>		<u>42,810,047</u>	<u>41,811,871</u>
NET SURPLUS (DEFICIT)	<u>\$ 429,584</u>	<u>\$ (998,176)</u>	<u>\$ (1,427,760)</u>		<u>\$ 4,422,123</u>	<u>\$ 5,420,299</u>

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



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors
From: Bill Carnahan, Interim CEO
CC: Michael Maher, Maher Accountancy
Subject: Received FY2020 Audited Financial Statements from Pisenti & Brinker
Date: January 28, 2021

RECOMMENDATION

Receive and file report.

BACKGROUND

San Diego Community Power's JPA requires an annual financial statement audit performed by an independent auditor. Pisenti & Brinker was chosen to perform the audit. This firm has extensive experience auditing CCA's throughout California, as well as other local government entities.

ANALYSIS AND DISCUSSION

Pisenti & Brinker has prepared a presentation describing the audit process and results.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Audited Financial Statements for Fiscal Year Ended June 30, 2020



SAN DIEGO COMMUNITY POWER
FINANCIAL STATEMENTS
FISCAL PERIOD ENDED JUNE 30, 2020
WITH REPORT OF
INDEPENDENT AUDITORS

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Independent Auditor's Report

To the Board of Directors
San Diego Community Power
San Diego, California

Report on the Financial Statements

We have audited the accompanying financial statements of San Diego Community Power (SDCP), which comprise the statement of net position as of June 30, 2020, the related statement of revenues, expenses and changes in net position and cash flows for the period from October 1, 2019 (inception date) to June 30, 2020, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of San Diego Community Power as of June 30, 2020 and the results of the financial position and cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report (continued)

Other Matters

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Presente & Brink LLP

Santa Rosa, California
January 22, 2021

**SAN DIEGO COMMUNITY POWER
MANAGEMENT'S DISCUSSION AND ANALYSIS
PERIOD ENDED JUNE 30, 2020**

The Management's Discussion and Analysis provides an overview of San Diego Community Power's (SDCP) financial activities from inception to June 30, 2020. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of SDCP was made possible in 2002 by the passage of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

SDCP was created as a California Joint Powers Authority (JPA) effective October 1, 2019, and was established to provide electric power at competitive costs as well as to provide other benefits to the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego, including reducing greenhouse gas emissions related to the use of power, procuring energy with a priority on the use and development of local renewable resources, stimulating local job creation through various programs and development, promote personal and community ownership of renewable resources, as well as promoting long-term electric rate stability and energy reliability for residents and businesses. Governed by a board of directors (Board) consisting of elected representatives from each jurisdiction, SDCP has the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. SDCP will be responsible for the acquisition of electric power for its service area.

Prior to the creation of SDCP as a JPA, the City of San Diego managed the financial and administrative activities related to the formation of this community choice aggregation program. Pursuant to a cooperation agreement with the City of San Diego, SDCP accepted an obligation to reimburse the City of San Diego for specified costs to initiate the entity and its programs which were incurred prior to the JPA agreement, as well as for costs incurred during the start-up phase of SDCP.

SDCP will begin providing electricity to customers in 2021.

**SAN DIEGO COMMUNITY POWER
MANAGEMENT'S DISCUSSION AND ANALYSIS
PERIOD ENDED JUNE 30, 2020**

Financial Reporting

SDCP presents its financial statements 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).

Contents of this report

This report is divided into the following sections:

- Management discussion and analysis, which provides an overview of the financial operations.

- The basic financial statements:
 - The *Statement of Net Position* includes all of SDCP's assets, liabilities, and net position and provides information about the nature and amount of resources and obligations at a specific point in time.

 - The *Statement of Revenues, Expenses, and Changes in Net Position* report all of SDCP's revenue and expenses for the period shown.

 - The *Statement of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as debt financing.

 - Notes to the Basic Financial Statements, which provide additional details and information related to the basic financial statements.

**SAN DIEGO COMMUNITY POWER
MANAGEMENT'S DISCUSSION AND ANALYSIS
PERIOD ENDED JUNE 30, 2020**

FINANCIAL HIGHLIGHTS

The following table is a summary of SDCP's assets, liabilities, and net position as of June 30, 2020:

Current assets	\$ 363,982
Noncurrent assets	<u>5,600,000</u>
Total assets	<u>5,963,982</u>
Current liabilities	566,834
Noncurrent liabilities	<u>6,467,258</u>
Total liabilities	<u>7,034,092</u>
Net position	
Unrestricted (deficit)	<u>(1,070,110)</u>
Total net position	<u>\$ (1,070,110)</u>

Current and noncurrent assets

Current assets and noncurrent assets are mostly comprised of cash. SDCP holds cash of \$5,500,000 that is restricted as collateral for a bank line of credit. Other noncurrent assets represent deposits in SDCP's name held by other parties.

Current liabilities

Current liabilities consist of trade accounts payable for services and general and administrative costs.

Noncurrent liabilities

During 2019-20, SDCP borrowed \$990,082 from River City Bank and \$5,000,000 from private parties. The River City Bank debt represents draws from a \$35,000,000 revolving line of credit. This line of credit was established to provide for working capital during SDCP's start up period and will also provide resources for the procurement of electricity during the early phases of its customer launch, as certain payments and deposits to suppliers are required in advance of the collection of revenues from customers. The \$5,000,000 private debt was incurred to provide for the cash collateral requirement of the River City Bank revolving line of credit.

Also included in noncurrent liabilities is \$477,000 for start-up related costs owed primarily to the City of San Diego.

**SAN DIEGO COMMUNITY POWER
MANAGEMENT’S DISCUSSION AND ANALYSIS
PERIOD ENDED JUNE 30, 2020**

The following table is a summary of SDCP’s results of operations from inception (October 1, 2019) through June 30, 2020:

Operating revenues	\$ -
Operating expenses	1,006,369
Nonoperating expenses	<u>63,741</u>
Total expenses	<u>1,070,110</u>
Change in net position	<u><u>\$ (1,070,110)</u></u>

Operating expenses

Expenses for contracting services and other general and administrative expenses are included in operating expenses.

Nonoperating expenses

Interest expense on borrowings during 2019-20 are included as nonoperating expenses.

ECONOMIC OUTLOOK

SDCP will begin to provide electricity to customers in early 2021. Customer groups will be added during multiple phases throughout the year. This will result in a large increase in expenses, as SDCP will begin to procure the electric resources needed to sell to its customers. While this will mark the first period of revenue recognition, SDCP plans to utilize its revolving line of credit to provide for working capital needs until sufficient customer receipts are collected.

REQUEST FOR INFORMATION

This financial report is designed to provide SDCP’s customers and creditors with an overview of the SDPC’s finances and to demonstrate SDCP’s accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 815 E Street, Unit 12716, San Diego, CA 92101.

Respectfully submitted,

Bill Carnahan, CEO

BASIC FINANCIAL STATEMENTS

**SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
AS OF JUNE 30, 2020**

ASSETS

Current assets	
Cash and cash equivalents	\$ 338,982
Prepaid expenses	25,000
Total current assets	363,982
Noncurrent assets	
Restricted cash	5,500,000
Deposits	100,000
Total noncurrent assets	5,600,000
Total assets	5,963,982

LIABILITIES

Current liabilities	
Accounts payable	330,042
Other accrued liabilities	223,133
Interest payable	13,659
Total current liabilities	566,834
Noncurrent liabilities	
Other noncurrent liabilities	477,176
Bank note payable	990,082
Loans payable	5,000,000
Total noncurrent liabilities	6,467,258
Total liabilities	7,034,092

NET POSITION

Unrestricted (deficit)	(1,070,110)
Total net position	\$ (1,070,110)

**SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
INCEPTION (OCTOBER 1, 2019) THROUGH JUNE 30, 2020**

	Inception through June 30, 2020
OPERATING REVENUES	\$ -
OPERATING EXPENSES	
Contract services	529,193
General and administration	477,176
Total operating expenses	<u>1,006,369</u>
Operating loss	<u>(1,006,369)</u>
NONOPERATING EXPENSES	
Interest and financing expenses	<u>63,741</u>
CHANGE IN NET POSITION	(1,070,110)
Net position at beginning of period	<u>-</u>
Net position at end of period	<u><u>\$ (1,070,110)</u></u>

The accompanying notes are an integral part of these financial statements.

**SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
INCEPTION (OCTOBER 1, 2019) THROUGH JUNE 30, 2020**

CASH FLOWS FROM OPERATING ACTIVITIES

Payments for goods and services	\$ (101,018)
Net cash used by operating activities	<u>(101,018)</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Proceeds from loans	5,000,000
Proceeds from bank note	<u>940,000</u>
Net cash provided by non-capital financing activities	<u>5,940,000</u>

Net change in cash and cash equivalents	5,838,982
Cash and cash equivalents at beginning of period	<u>-</u>
Cash and cash equivalents at end of period	<u>\$ 5,838,982</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 338,982
Restricted cash	<u>5,500,000</u>
Cash and cash equivalents	<u>\$ 5,838,982</u>

Noncash Non-capital Financing Activities:

Expenses of \$50,082 related to the acquisition of debt were financed from loan proceeds.

**SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (CONTINUED)
INCEPTION (OCTOBER 1, 2019) THROUGH JUNE 30, 2020**

**RECONCILIATION OF OPERATING LOSS TO NET
CASH USED BY OPERATING ACTIVITIES**

Operating loss	\$ (1,006,369)
Adjustments to reconcile operating loss to net cash used by operating activities	
(Increase) decrease in:	
Prepaid expenses	(25,000)
Deposits	(100,000)
Increase (decrease) in:	
Accounts payable	330,042
Other accrued liabilities	700,309
Net cash used by operating activities	<u>\$ (101,018)</u>

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

San Diego Community Power (SDCP) is a California joint powers authority created on October 1, 2019. As of June 30, 2020, parties to its Joint Powers Agreement consist of the following local governments:

<u>Cities</u>	
Chula Vista	Imperial Beach
Encinitas	San Diego
La Mesa	

SDCP is separate from and derives no financial support from its members. SDCP is governed by a Board of Directors whose membership is composed of elected officials or other representatives of the member governments.

A core function of SDCP is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

BASIS OF ACCOUNTING

SDCP's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

SDCP's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories, if applicable – investment in capital assets, restricted and unrestricted.

When both restricted and unrestricted resources are available for use, it is SDCP's policy to use restricted resources first, then unrestricted resources as they are needed.

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CASH AND CASH EQUIVALENTS

For purpose of the Statement of Cash Flows, SDCP has defined cash and cash equivalents to include cash on hand, demand deposits, and short-term investments with an original maturity of three months or less. For the purpose of the Statement of Net Position, restricted cash balances are presented separately. Restricted cash reported on the Statement of Net Position includes collateral on a bank loan, as well as a required minimum balance to be maintained in one of its bank accounts.

DEPOSITS

SDCP's assets include deposits held by others for regulatory and other operating purposes.

OPERATING AND NONOPERATING EXPENSES

Operating expenses include the costs of services and administrative expenses. Expenses not meeting this definition are reported as nonoperating expenses.

INCOME TAXES

SDCP is a joint powers authority under the provision of the California Government Code and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

2. CASH AND CASH EQUIVALENTS

SDCP maintains its cash in accounts at River City Bank in Sacramento, California. SDCP's deposits with River City Bank are subject to California Government Code Section 16521 which requires that River City Bank collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of \$250,000 by 110%. SDCP has no deposit or investment policy that addresses a specific type of risk that would impose restrictions beyond this code. Accordingly, the amount of risk is not disclosed. SDCP monitors its risk exposure to River City Bank on an ongoing basis.

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

3. OTHER NONCURRENT LIABILITIES

Included in noncurrent liabilities are amounts advanced by the Cities of San Diego, La Mesa, and Encinitas (the Cities) to SDCP for start-up related costs. SDCP will reimburse the Cities as soon as practically possible and no later than the earlier of five years after SDCP’s formation date of October 1, 2019, or two years after initial loans and lines of credit are repaid. Interest does not accrue on the liabilities to the Cities.

The following is a schedule of changes in other noncurrent liabilities during the period:

	<u>Beginning</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending</u>
Period ended June 30, 2020				
Start-up funds				
advanced from Cities	\$ -	\$ 477,176	\$ -	\$ 477,176
Amounts due within one year				-
Amounts due after one year				<u>\$ 477,176</u>

4. DEBT

Bank note payable

In May 2020, SDCP arranged to borrow up to \$35,000,000 through a revolving credit agreement from River City Bank to provide cash for working capital before sufficient revenue is to be collected from customers. The amount available to SDCP “steps up” throughout fiscal year 2021 and will be fully available prior to the end of that year. At June 30, 2020, SDCP borrowed a total of \$990,082, leaving \$34,010,000 available to be drawn after the final “step up” period has occurred. As security, SDCP assigned a security interest in all accounts, revenues, resource adequacy contracts, debt service reserve accounts and cash collateral accounts. Principal can be drawn as needed and interest is accrued on the outstanding balance. Additionally, the bank requires \$5,000,000 cash collateral to be held during the term of the agreement. The stated maturity date is May 31, 2022, with interest payable each month commencing on July 1, 2020. The interest rate at June 30, 2020, was computed at one-month LIBOR plus a rate of 2.00%, for a total rate of 2.18% per annum. In the event of default, the note becomes immediately due and payable.

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

4. DEBT (continued)

Loans payable

In May 2020, SDCP borrowed \$5,000,000 in total from two private lenders for the purpose of funding a collateral account to be held by River City Bank. Each loan is due on May 21, 2023. The notes bear interest equal to the one-month LIBOR rate plus 2% per annum at June 30, 2020. Interest payments are due quarterly, commencing when SDCP begins selling electricity to customers. In the event of default, the lender has the right to pursue all remedies available at law or equity against SDCP.

Note and loan principal activity and balances were as follows for the following direct borrowings:

	<u>Beginning</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending</u>
Period ended June 30, 2020				
Bank note payable	\$ -	\$ 990,082	\$ -	\$ 990,082
Private loans payable	-	5,000,000	-	5,000,000
Total	<u>\$ -</u>	<u>\$ 5,990,082</u>	<u>\$ -</u>	<u>5,990,082</u>
Amounts due within one year				-
Amounts due after one year				<u>\$ 5,990,082</u>

The following is a summary of SDCP's future annual payment obligations:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
Year ended June 30,			
2021	\$ -	\$ 130,584	\$ 130,584
2022	990,082	128,785	1,118,867
2023	5,000,000	98,403	5,098,403
Total	<u>\$ 5,990,082</u>	<u>\$ 357,772</u>	<u>\$ 6,347,854</u>

Other lines of credit

In April 2020, SDCP entered into a professional services agreement with a service provider that includes a provision that allows SDCP to borrow up to \$2,000,000 to cover certain working capital needs. All borrowing requests must occur prior to SDCP's initial customer launch date, and repayments of amounts borrowed will occur in twelve equal monthly installments beginning ninety days after the initial launch date. The borrowed amounts will be subject to interest at one-month LIBOR plus a rate of 2.00% per annum. At June 30, 2020, there were no borrowings related to this agreement.

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

5. RISK MANAGEMENT

SDCP is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the period ended June 30, 2020, SDCP did not have liability and property insurance from a commercial carrier. In July 2020, SDCP purchased coverage for property, general liability, errors and omissions and non-owned automobile with a limit of \$2,000,000 with a \$1,000 deductible.

6. COMMITMENTS

In the ordinary course of business, SDCP enters into various power purchase agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind, and hydro-electric facilities.

The following table details the obligations to purchase existing energy, renewable, and resource adequacy (RA) contracts as of June 30, 2020:

Year ending June 30,	
2021	\$ 18,000,000
2022	39,000,000
2023	31,000,000
2024	10,500,000
Total	<u>\$ 98,500,000</u>

7. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for years ending after June 30, 2020:

GASB has approved GASB Statement No. 87, *Leases*, GASB 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, GASB 96, *Subscription-Based Information Technology Arrangements*; and GASB No. 97, *Certain Component Unit Criteria and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*. When they become effective, the application of these standards may restate portions of these financial statements.

**SAN DIEGO COMMUNITY POWER
NOTES TO THE BASIC FINANCIAL STATEMENTS
PERIOD ENDED JUNE 30, 2020**

8. SUBSEQUENT EVENT

Covid-19

In December 2019, a novel strain of coronavirus disease (“COVID-19”) was first reported. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic. The extent to which the ongoing response to and impacts of COVID-19 will affect SDCP’s operational and financial performance is unknown at this time and will be monitored by management.



SAN DIEGO COMMUNITY POWER Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Cody Hooven, Chief Operating Officer
Glen Price, General Counsel, BB&K

Subject: Adopt Resolution Granting the Interim Chief Executive Officer the Authority to Execute an Amendment with River City Bank

Date: January 28, 2021

RECOMMENDATION

Adopt Resolution 2021-01 granting the Interim Chief Executive Officer authority to execute an amendment with River City Bank regarding technical modifications to the Credit Agreement to address changes to SDCP's fiscal year, pro-forma and phasing schedule.

BACKGROUND

In April 2020, the Board authorized the Interim Executive Officer execute a Credit Agreement and related documents necessary to implement a \$35 million credit facility with River City Bank. The Credit Agreement with River City Bank provides for a revolving credit facility of up to \$35 million for a 2-year term with an option to convert the revolving credit balance into a 3-year term loan in 2022. The funds would be made available for cash advances for working capital both pre- and post-commencement of operations and/or letters of credit that will be used for credit support in power purchase transactions. The amount of credit available is an initial \$5 million of startup costs that will step up in increments of \$20 million and \$10 million upon SDCP meeting certain benchmarks for the commencement of commercial and residential operations. The funds that will be made available pursuant to the River City Bank credit facility will be used primarily for short term and long-term power purchase agreements and to provide collateral as security for ongoing power procurement needs. The initial \$5 million in funding is being used for working capital to support the full costs of start-up activities, including staffing, energy services, marketing, and compliance.

ANALYSIS AND DISCUSSION

The Credit Agreement with River City Bank includes financial covenants and conditions precedent to the step-up in financing provided for each phase of SDCP operations. The covenants and conditions in the Credit Agreement were based on an initial schedule for phased roll-out and pro-forma that have changed over the course of the year as SDCP prepares for actual operations. They were also based on a calendar fiscal year, which



has now been changed to the typical public agency fiscal year commencing on July 1. As a result, it is necessary to make revisions to the covenants and conditions to reflect the change in fiscal year, a final pre-launch pro-forma, and to ensure that the dates for step-up in funding availability match the updated schedule. The revisions will not involve changes in the amount of credit available to SDCP or the material terms for the financing. Staff is asking that the Board authorize the Interim CEO, with the assistance of legal counsel, to negotiate and execute an amendment to the Credit Agreement to reflect the necessary technical modifications.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Resolution 2021-01 granting the CEO authority to execute an amendment with River City Bank regarding technical modifications to the Credit Agreement to address changes in SDCP's fiscal year, pro-forma and phasing schedule.



RESOLUTION NUMBER 2021-01

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
AUTHORIZING CEO TO EXECUTE MODIFICATION TO CREDIT AGREEMENT**

WHEREAS, San Diego Community Power (“SDCP”) entered into a Credit Agreement with River City Bank to provide a credit facility in the amount of \$35,000,000 (“Credit Agreement”); and

WHEREAS, the Credit Agreement provides for certain financial covenants and conditions with respect to increases in the amount of credit available as each phase of SDCP operations commences; and

WHEREAS, there have been changes in SDCP’s fiscal year, proforma and phase commencement dates since the execution of the Credit Agreement;

WHEREAS, SDCP staff and legal counsel have discussed with River City Bank that it is necessary to make technical changes in the covenants and conditions set forth in the Credit Agreement to take such changes into account; and

WHEREAS, it is important from a timing perspective to have such technical changes in place so that the step-up in credit availability will coincide with the commencement of phase 1 operations;

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

1. The Board of Directors has determined that the recitals herein are true and correct.
2. The Board of Directors hereby authorizes the Bill D. Carnahan, the interim Chief Executive Officer, or his designee, with the advice of legal counsel, to negotiate and execute an amendment to the Credit Agreement to implement technical modifications to address the change in the fiscal year of SDCP and account for changes in the proforma and schedule for the phasing of SDCP operations.
3. This Resolution shall be effective immediately after its adoption by the Board of Directors.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power on January 28, 2021.

Approved as to form:

Ryan Baron
SDCP Legal Counsel

AYES: _____ NAYS: _____ ABSENT: _____ ABSTAIN: _____



SAN DIEGO COMMUNITY POWER Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Bill Carnahan, Interim CEO

CC: Ryan Baron, General Counsel, Best Best & Krieger

Subject: Adopt Resolution Approving SDG&E Master Power Purchase and Sales Agreement

Date: January 28, 2021

RECOMMENDATION

Adopt Resolution 2021-02 approving a Master Power Purchase and Sales Agreement and Authorizing the Interim Chief Executive Officer to Execute the Master Agreement, Confirmation and Related Documents.

ANALYSIS AND DISCUSSION

SDG&E Agreement

SDCP is in the process of negotiating a Master Power Purchase and Sale Agreement (“Master Agreement”) with San Diego Gas & Electric (“SDG&E”) for the purchase of renewable energy. Although the Interim CEO has the authority to execute specific transactions under delegated authority per SDCP’s Energy Risk Management Policy, the CEO does not have the authority to execute the Master Agreement. The Master Agreement is an “evergreen” agreement with SDG&E that would allow SDCP to enter into future transactions with SDG&E should SDCP submit competitive offers into SDG&E solicitations. More information about the Master Agreement/Confirmation process is discussed below. Staff recommends the Board of Directors adopt the resolution approving the SDG&E Master Agreement and authorizing the Interim CEO authority to execute the agreement and related documents.

Master Agreement

The Master Agreement will govern individual transactions between the parties, including buyer and seller obligations, defaults, collateral requirements, indemnities and other legal provisions. Actual purchases by SDCP will be executed through a Confirmation Agreement that will contain the price, resource, quantity, term and other commercial terms of the transaction. Confirmation agreements are typically shorter one to two page contracts governed by the Master Agreement.

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

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

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Resolution 2021-02 Approving SDG&E Master Purchase and Sales Agreement and Delegating Authority to Interim CEO to Execute

Attachment B: SDG&E Master Purchase and Sale Agreement



RESOLUTION NO. 2021-02

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
APPROVING A MASTER POWER PURCHASE AND SALE
AGREEMENT WITH SAN DIEGO GAS & ELECTRIC AND
AUTHORIZING THE INTERIM CEO TO EXECUTE THE
AGREEMENT AND RELATED DOCUMENTS**

A. San Diego Community Power (SDCP) 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 (JPA Agreement).

B. SDCP intends to launch the service of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. SDCP has negotiated a Edison Electric Institute Master Power Purchase and Sale Agreement (Master Agreement) with San Diego Gas & Electric (SDG&E).

D. The SDCP Board of Directors desires to enter into the Master Agreement SDCP with SDG&E renewable energy and delegate authority to the Interim Chief Executive Officer (CEO) to negotiate and execute the Master Agreement.

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

Section 1. The Board of Directors approves the Master Agreement with SDG&E.

Section 2. The Interim CEO is authorized to execute the Master Agreement and related documents in substantially similar form, as approved by General Counsel, as are necessary and convenient to complete renewable energy transactions with SDG&E.

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

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on January 28, 2021.

Joe Mosca, Chair
San Diego Community Power

Megan Wiegelman, Interim Secretary
San Diego Community Power

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)

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INDUSTRY IS ENCOURAGED TO USE THIS MASTER POWER PURCHASE AND SALE AGREEMENT IN ITS TRANSACTIONS.
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MASTER POWER PURCHASE AND SALE AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: _____, 2020 (“Effective Date”). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

Name: **San Diego Gas & Electric Company, a California corporation** (“SDG&E” or “Party A”)

Name: [NAME] (“SHORT NAME” or “Party B”)

All Notices:

Address: 8315 Century Park Court CP 21D
San Diego CA 92123-1593

All Notices:

Address: _____

Attn: Contract Administration
Phone: (858) 650-6176
Facsimile: (858) 650-6190
Duns: 006911457
Federal Tax ID Number: 95-1184800

Attn: _____
Phone: _____
E-mail: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Phone: (858) 650-6177
Facsimile: (858) 650-6190

Invoices:

Attn: _____
Phone: _____
E-mail: _____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Scheduling:

Attn: _____
Phone: _____
E-mail: _____

Confirmations:

Attn: _____
Address: _____
Phone: _____
E-mail: _____

Confirmations:

Attn: _____
Address: _____
Phone: _____
E-mail: _____

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Phone: (858) 650-6177
Facsimile: (858) 650-6190

Payments:

Attn: _____
Phone: _____
E-mail: _____

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316< bank name >

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

Credit and Collections:

Attn: _____
Phone: _____
E-mail: _____

**With additional Notices of an Event of Default or
Potential Event of Default to:**

San Diego Gas & Electric Company
8330 Century Park Ct.
San Diego, California 92123
Attn: General Counsel
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

**With additional Notices of an Event of Default or
Potential Event of Default to:**

Attn: _____
Phone: _____
Email: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff: Party A’s effective market-based rate tariff on file with the Federal Energy Regulatory Commission.

Party B Tariff: N/A

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: SDG&E Cross Default Amount \$ _____
 Other Entity: Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements (a) Financial Information:
 Option A
 Option B Specify:
 Option C Specify:
(b) Credit Assurances:
 Not Applicable
 Applicable
(c) Collateral Threshold:
 Not Applicable
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____;
provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's.
- Other - Specify: Downgrade Event threshold as set forth in the Applicable Confirmation.

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify:
- Option C Specify:

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's.
- Other - Specify:

(e) Guarantor for Party A: _____

Guarantee Amount: \$ _____

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.4. If not checked, inapplicable

Other Changes

This Master Power Purchase and Sale Agreement incorporates by this reference the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

ARTICLE ONE: GENERAL TERMS AND CONDITIONS

1. **"Affiliate"**: Section 1.1 is amended by adding the following sentence at the end of the definition:

"Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for purposes of this Master Agreement or any Confirmation executed in connection therewith."

2. **"Business Day"**: Section 1.4 is amended by replacing "Party from whom" with the phrase "Party to whom" and by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3. “**Confirmation**”: Section 1.9 is amended by deleting the reference to “Section 2.3” and replacing it with a reference to “Section 2.1”.
4. “**Force Majeure**”: Section 1.23 is amended by inserting the word “two.” immediately before “foregoing factors” in the thirteenth line.
5. “**Gains**”: Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2” and by adding at the end: “based on the prime rate of interest as published from time to time under *The Wall Street Journal* for such period.”
6. A new Section 1.26A is added as follows:

“1.26A “**Joint Powers Agreement**” means the Joint Powers Agreement, effective as of [DATE], as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”
7. “**Letters of Credit**”: Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”
8. “**Losses**”: Section 1.28 is amended by adding to the end thereof: “based on the prime rate of interest as published from time to time under *The Wall Street Journal* for such period.”
9. “**Replacement Price**”: Section 1.51 is amended by adding “for delivery” immediately before “at the Delivery Point” in the second line, and replacing “at Buyer’s option” with “absent a purchase” in the fifth line.
10. “**S&P**”: Section 1.52 is amended by replacing “Standard & Poor’s Rating Group (a division of McGraw Hill, Inc.) with “S&P Global Ratings”.
11. “**Sales Price**”: Section 1.53 is amended by:
 - (i) deleting “at the Delivery Point” from the second line;
 - (ii) replacing “at Seller’s option” in the fifth line with “absent a sale”; and
 - (iii) inserting “; provided, however if Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed not greater than zero (0)” after “commercially reasonable manner” in the sixth line.
12. “**Settlement Amount**”: Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”
13. “**Transaction**”: Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

1. In Section 2.1, delete the first sentence in its entirety and replace it with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

2. In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

3. Section 2.3 is deleted in its entirety and replaced with the following:

“**2.3 Confirmation.** A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

4. Section 2.4 is amended by deleting the words “either orally or” in the sixth line and adding “a” before the word “writing”.

5. Section 2.5 is hereby amended by deleting the last two sentences thereof in their entirety.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

1. Section 3.2 is amended by adding to the end thereof: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

1. In Section 5.1(a), change “three (3) Business Days” to “five (5) Business Days”.
2. In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

3. In Section 5.1(h)(v), add “made in connection with this Agreement” after “any guaranty”.
4. Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

“(i) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice;

“(j) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days; and

“(k) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

5. Section 5.2 is deleted in its entirety and replaced with the following:

“**5.2 Effect of Event of Default.** If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty days’ notice, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions (each referred to as a “Terminated Transaction”). The Non-Defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an “Excluded Transaction”) shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party’s calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Settlement Amount shall be deemed to be zero dollars (\$0.00).”

6. Section 5.3 is amended by adding “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

7. The following is added to the end of Section 5.4:

“Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Five until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed.”

8. Section 5.7 is deleted in its entirety and replaced with the following:

“Notwithstanding any other provision of this Master Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.”

ARTICLE SIX: PAYMENT AND NETTING

1. Section 6.1 is amended by replacing “each Party will render to the other Party” in the last sentence with “the Party owing the lesser amount as determined pursuant to standard wholesale electric industry check-out procedures for the point of delivery associated with each Transaction will transmit to the other Party”.
2. Section 6.2 is amended by replacing “each party’s” with “the Party owing the lesser amount as determined by standard wholesale electric industry check-out procedures for the point of delivery associated with each Transaction” in the third line; and deleting “, or by other mutually agreeable method(s),” from the second sentence.

3. Section 6.3 is amended by deleting the second sentence in its entirety and replacing it with the following:

“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, the Party disputing the invoice will provide notice of the objection to the other Party no later than the due date for such invoice. The Party that delivered the invoice will review the notice and, if it agrees with the proposed adjustments, make appropriate corrections. If a corrected invoice is received within the same calendar month as the original invoice, payment shall be due in accordance with Section 6.2. If the Parties are not able to resolve an invoice dispute by the last day of the month in which the invoice was delivered, payment of the undisputed portion of the invoice shall be required to be made within five (5) Business Days following written notice from the invoicing Party.”

4. In Section 6.3, lines 3, 16 & 18, change “twelve (12) months” to “twenty-four (24) months”.

5. Section 6.4 is amended by deleting “and owing to each other on the same date”.

ARTICLE SEVEN: LIMITATIONS

1. Section 7.1 is amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN

SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

1. In Sections 8.1(b), 8.1(c), 8.2(b) and 8.2(c), change “three (3) Business Days” to “five (5) Business Days”.
2. A new Section 8.4 is added as follows:

“In no event shall a Party be required to provide Performance Assurances that in the aggregate exceeds the Termination Payment.”
3. A new Section 8.5. “UCC Waiver,” is added as follows:

“Section 8.5: Section 8 sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

ARTICLE TEN: MISCELLANEOUS

1. In Section 10.2, delete the phrase “(including any Confirmation accepted in accordance with Section 2.3)” from Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).
2. After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) it intends that all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) it intends that all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”;

(xvi) it intends that each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions;

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended (the “Commodity Exchange Act”); and

(xviii) it is an “Eligible Contract Participant” as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18).”

3. Section 10.2(ix) is deleted in its entirety and replaced with the following:

“Each Party intends that it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Code, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

4. Section 10.5 is amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any.”

5. Section 10.6 is amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN DIEGO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to

California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

6. In Section 10.6, change “NEW YORK” to “CALIFORNIA”

7. Section 10.8 is amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.”

8. In Section 10.9, insert “copies of” after “examine” in line 2.

9. Section 10.10 is amended by adding the following after the last sentence:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

10. Section 10.11 is amended by inserting “are intended to” after “Transactions”.

11. Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet to this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 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. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

Upon request or demand of any third person or entity not a Party hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party B will as soon as practical notify Party A in writing via email that such request has been made. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B 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 Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A, if requested by Party A, and Party A agrees to indemnify and hold harmless Party B, its officers, employees and agents (“Party B Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Party B Indemnified Parties for Party B’s refusal to disclose any Requested Confidential Information.”

12. The following Mobile-Sierra clause is added as a new Section 10.12:

“10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

13. The following is added as a new Section 10.13:

“Party A’s Deliveries. Upon request of Party B, Party A shall provide to Party B (i) a certificate of good standing issued by the [State] Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

14. The following is added as a new Section 10.14:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a California community choice aggregator engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

15. The following is added as a new Section 10.15:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Confirmation or the Imaged Agreement on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

16. The following is added as a new Section 10.16:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) **Market Disruption.** If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of 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 will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

17. The following is added as a new Section 10.17:

“Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

18. The following is added as a new Section 10.18:

“No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers,

directors, advisors, contractors, consultants or employees of Party B or Party B's constituent members, in connection with this Agreement.”

SCHEDULE M

Schedule M is amended, with respect to Party B, as follows:

1. Paragraph A is amended by deleting the term “Act” and replacing it with the following:

““**Act**” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).”

2. Paragraph D is deleted in its entirety and replaced with:

“Section 3.4 Party B's Deliveries. Upon request by Party A, Party B shall provide Party A (a) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (b) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

3. Paragraph G is deleted in its entirety and replaced with the following:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”

SCHEDULE P

1. Schedule P, “**Products and Related Definitions**,” is modified by adding the following at the end:

“Other Products and Service Levels: If the Parties agree to a service level defined by a different agreement (e.g., the WSPP Agreement, the California Independent System Operator tariff, etc.) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be defined by such other agreement, including, if applicable, the regional reliability requirements and guidelines as well as the excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement shall remain applicable including, without limitation, Section 2.2.”

2. The following definitions are added to Schedule P:

“**WSPP Agreement**” means the WSPP as amended from time to time.”

“**CAISO Energy**” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator (“CAISO”) Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” as defined in the CAISO Tariff.”

“**West Firm**” or “**WSPPC-Firm**” means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service.”

3. The Parties may from time to time by notice to each other mutually agree to adopt product definitions, delivery point language and definitions, and conversion conventions, that are posted by the Edison Electric Institute to its website as optional language for the Master Power Purchase and Sale Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

SAN DIEGO GAS & ELECTRIC COMPANY,
a California corporation

a _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED as to legal form _____

APPROVED as to form:

By: _____

Name: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider

unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or

more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper

exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s

Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the

Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;

- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE

LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's

quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have

occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor’s obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days’ prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire

agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled

to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all

other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount

determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product.

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has

secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____



SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Programs and Policy Manager

CC: Kirby Dusel, Pacific Energy Advisors

Subject: Adoption of a Feed-In Tariff Schedule, Application, and Update to Inclusive and Sustainable Workforce Policy

Date: January 28, 2021

RECOMMENDATION

1. Adopt initial Feed-In Tariff (FIT) schedule and the related FIT Application.
2. Adopt update to the Inclusive and Sustainable Workforce policy.
3. Authorize staff to work with SDCP's transactional counsel in developing a FIT Power Purchase Agreement (to be reviewed and approved at a future Board meeting).

BACKGROUND

A Feed-in Tariff, or "FIT", is a standard offer power purchase program, which is typically implemented to incentivize locally situated, small-scale renewable energy projects that are not necessarily price competitive with other utility-scale alternatives (often developed in optimal resource areas with much larger project footprints). The Board was previously presented with a FIT program overview, which included information regarding typical requirements and program parameters that have been adopted by other CCAs and the incumbent utility, SDG&E. Based on interest expressed by the Board during the August 27th overview, staff began developing recommended FIT parameters for SDCP's prospective FIT program and shared such recommendations with the Finance & Risk Management Committee (FRMC) on November 5th. During that FRMC meeting, Committee members provided feedback regarding pricing, capacity limitations and other key program elements, and staff was instructed to prepare a draft Feed-In Tariff document and a related FIT Application for discussion during the FRMC's December 2020 meeting.

At the FRMC's December 2020 meeting, staff presented a complete draft of SDCP's FIT document, which reflected pertinent parameters, eligibility requirements and other program details, as well as a related FIT application, which is intended to gather requisite information from interested program participants (and establish FIT program eligibility). Such materials were largely based on similar materials that have been successfully

implemented by other California CCA programs, notably Marin Clean Energy, Redwood Coast Energy Authority and Sonoma Clean Power.

Staff also presented an update to the Feed-In Tariff section of SDCP's Inclusive and Sustainable Workforce Policy to the FRMC and the CAC, as directed by the Board at the November meeting. The FRMC provided further suggestions on this language to ensure consistency with State requirements regarding prevailing wage, use of apprenticeships, and worker's compensation benefits. Comments provided by the FRMC on the FIT program have been incorporated in the draft materials attached hereto. Staff also included a recommended change in the language under the PPAs to coincide with applicable state requirements. The CAC provided no substantial comment on the updated draft but to ensure that equity is a focal point of policies adopted by the Board. The updated draft policy is found as Attachment C. Moreover, this is a living document that may be changed down the road.

As a reminder, any supply arranged through a FIT program will complement other wholesale renewable energy purchases secured by SDCP. Benefits of a FIT program are expected to include support for local businesses, generalized local economic development benefits, increased utilization of local renewable energy resources and highly visible project development opportunities that should become centerpieces of SDCP's marketing collateral and communication campaigns.

ANALYSIS AND DISCUSSION

As drafted, SDCP's FIT program incorporates the following eligibility requirements and other key parameters:

- Only California Energy Commission-certified renewable generating resources may participate;
- Participating projects must be less than 1MW;
- Until amended by SDCP's Board, the overall initial participatory cap shall be limited to 3 MW;
- Projects must be located within SDCP's territory;
- Renewable energy certificates produced by FIT projects will be transferred to and owned by SDCP;
- All FIT projects will deliver under a non-negotiable 20-year Power Purchase Agreement;
- The base FIT price shall be \$80/MWh;
- Bonus Incentives shall be available, subject to pertinent eligibility criteria, for the following project attributes:
 - Local Business: \$0.0025/kWh (\$2.50/MWh)
 - Local Project: \$0.0025/kWh (\$2.50/MWh)
 - Previously Developed Site: \$0.0025/kWh (\$2.50/MWh)
 - Sited within a Community of Concern: \$0.0025/kWh (\$2.50/MWh)
- Any Bonus Incentive(s) shall be payable during the first five (5) years of each delivery term; and



- All FIT projects must submit an Application prior to establishing a position in SDCP's FIT queue.

During previous discussions, the FRMC gave staff direction to require projects be located throughout San Diego County. After further revision and understanding the feasibility with connecting projects to the CAISO, staff is recommending that eligibility be limited to SDCP's service territory.

FISCAL IMPACT

Total power supply costs ranging from \$420,000 to \$473,000 per year; incremental power supply costs ranging from approximately \$180,000 to \$240,000 per year (relative to current wholesale renewable energy pricing alternatives). The magnitude of such impacts will be dependent upon program participation.

ATTACHMENTS

Attachment A: San Diego Community Power's draft Schedule SDCP FIT (FIT Tariff)
Attachment B: San Diego Community Power's draft Feed-In Tariff Application
Attachment C: Inclusive and Sustainable Workforce Policy





SCHEDULE SDCP FIT Feed-In Tariff for Distributed Renewable Generation Effective as of February 2021

A. APPLICABILITY

Schedule SDCP FIT is available to qualifying Applicants who wish to sell renewable energy to San Diego Community Power (“SDCP”) from an eligible small-scale distributed renewable generating resource (“Eligible Resource”). SDCP reserves the right to revise Schedule SDCP FIT, the related FIT Application and the terms of the FIT PPA from time to time. SDCP is not obligated to enter into a FIT PPA with any Applicant, and SDCP has no binding obligation under or in connection with this Schedule SDCP FIT until a related FIT PPA is duly executed by and between an Applicant and SDCP for an Eligible Resource.

Moreover, applicants are expected to review SDCP’s Inclusive and Sustainable Workforce policy ([link here](#)) to ensure compliance.

B. ELIGIBILITY CRITERIA

An Eligible Resource must meet the following criteria:

New Resource. The Eligible Resource must be new, meaning that the Eligible Resource must not have produced or delivered electric energy prior to the date on which its FIT Application is received by SDCP.

Small-Scale. The nameplate generating capacity of any Eligible Resource must be smaller than 1 MW (megawatt), alternating current.

Project Location. The Eligible Resource must be physically interconnected and located entirely within SDCP’s territory. As further described below, an Eligible Resource physically interconnected and located entirely within a member community of SDCP, as such membership exists on the date of FIT Application submittal, will be eligible to receive a Bonus Incentive.

RPS Eligibility. For purposes of this Schedule SDCP FIT, an Eligible Resource must qualify and be certified by the California Energy Commission (“CEC”) as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16, and as described in the most current edition of the CEC’s Renewables Portfolio Standard (“RPS”) Eligibility Guidebook (“Guidebook”), as may be amended or supplemented from time to time. The Eligible Resource must use a fuel source permitted under California’s current RPS program, as further described in the Guidebook, including but not limited to the following:

- | | |
|----------------------------------|-----------------------|
| Biomass | Biodiesel |
| Fuel cells using renewable fuels | Digester gas |
| Landfill gas | Municipal solid waste |
| Ocean wave | Ocean thermal |
| Tidal current | Solar Photovoltaic |
| Small hydroelectric | Solar thermal |
| Wind | Geothermal |

Interconnection. An Eligible Resource must pursue and secure interconnection using the appropriate interconnection process administered by San Diego Gas & Electric Company (SDG&E). Electrical interconnection of the Eligible Resource, including execution of all applicable agreements and payment of all applicable costs, shall be the sole responsibility of the FIT applicant and shall be completed consistent with interconnection requirements specified by SDG&E and/or the California Independent System Operator (CAISO), as appropriate. Any resources not meeting the requirements specified in the applicable interconnection procedures of the incumbent distribution utility will not be eligible for service under this Schedule SDCP FIT.

Permits. The FIT applicant must obtain all necessary permits from appropriate jurisdictional agencies and shall maintain such permits, as may be required, for the duration of the FIT PPA.

Bundled Product. The product sold by an Eligible Resource and purchased by SDCP shall include all electric energy, net of station service, environmental attributes (including related Renewable Energy Certificates, or “RECs”, which shall be transferred to SDCP using the Western Renewable Energy Generation Information System, or “WREGIS”) and capacity. For the sake of clarity, environmental attributes shall include all emission reduction benefits associated with the generation of renewable electricity by the Eligible Resource as well as other attributes. Participating Applicants will need to register with WREGIS and transfer all RECs to SDCP’s designated WREGIS account.

Environment Attributes. An Eligible Resource accepting service under this Schedule SDCP FIT will deliver to SDCP both the electric energy generated and any environmental attributes (associated with such electric energy) produced by the Eligible Resource.

FIT Power Purchase Agreement. All Eligible Resources shall execute SDCP’s FIT Power Purchase Agreement (“PPA”), which is a standard, non- negotiable, long-term contract created for the purpose of addressing SDCP power purchases from an Eligible Resource. SDCP’s FIT PPA can be accessed on SDCP’s website: [\[Insert URL\]](#)

C. TERM OF FIT PPA

Each FIT PPA shall have a delivery term of twenty (20) years beginning from the Commercial Operation Date (the “Delivery Term”).

D. FIT PPA INITIAL BASE PRICE

The base energy price for all FIT PPAs shall be \$0.08/kilowatt-hour (kWh) [\$80/MWh], subject to the application of Bonus Incentives as further described below.

E. BONUS INCENTIVES

SDCP may adjust FIT pricing for certain Eligible Resources meeting the criteria described below. Such adjustments shall be termed “Bonus Incentives” and, if applied, shall be paid during the first five (5) years of each FIT PPA. Applicants shall be notified of Bonus Incentive eligibility prior to FIT PPA execution.

- Local Business: \$0.0025/kWh (\$2.50/MWh)
- Local Project: \$0.0025/kWh (\$2.50/MWh)
- Previously Developed Site: \$0.0025/kWh (\$2.50/MWh)
- Sited within a Community of Concern: \$0.0025/kWh (\$2.50/MWh)

After the first five contract years, the price will revert to the base price of \$0.08/kilowatt-hour (kWh) [\$80/MWh].

Details regarding the documentation required to establish Bonus Incentive eligibility are outlined in the FIT Application. Characteristics associated with each Bonus Incentive are defined as follows:

Local Business: To qualify for the Local Business incentive the applicant and/or prime contractor must have a place of business (i.e. possesses a business license) physically headquartered within a member community of SDCP, as such membership exists on the date of FIT Application submittal.

Local Project: To qualify for the Local Project incentive the Eligible Resource must be physically interconnected and located entirely within one of SDCP's member communities, as such membership exists at the time of FIT Application submittal.

Previously Developed Sites: Such sites are defined as areas that either contain or have contained structures or were used for parking, loading or storage related to a previous or existing land use other than agricultural grazing or crop production within the last 20 years. To claim this bonus, the previously developed land must make up at least 20% of the project footprint. Development documentation, in the form of building permits or verifiable ground, aerial, or satellite photography, as solely determined by SDCP, must be provided by the FIT applicant.

Sited within a Community of Concern: To qualify for the Sited within Communities of Concern incentive the Eligible Resource must be located entirely within a Disadvantaged Community, as defined by the California Office of Environmental Health Hazard Assessment (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>), or within a very low to low access census tract found in the City of San Diego's Climate Equity Index (<https://www.sandiego.gov/sustainability/social-equity-and-job-creation>), either at the time of FIT application submittal. The geographical eligibility of Communities of Concern may expand as SDCP member cities enact their own Climate Equity Index designated census tracts.

F. FIT PAYMENTS

Payments will be made monthly by SDCP to the applicant for each Eligible Resource based on metered electric deliveries. Meter readings, net of station service, delivered by SDG&E will be used for payment determination as described in the FIT PPA.

G. FIT CAPACITY LIMIT

SDCP's FIT has a capacity limit of three (3) megawatts. The program will continue until there is no remaining capacity or until SDCP decides, at its sole discretion, to discontinue or suspend the program. SDCP's Governing Board reserves the right to adjust the noted FIT Capacity Limit at its sole discretion and without advance notice.

H. FORECASTING REQUIREMENTS

Generation forecasts will be required at the time of FIT application submittal and shall be updated (as needed) during construction and throughout the Delivery Term. Underperformance of an Eligible Resource, relative to forecast, may be grounds for financial penalties and/or FIT PPA termination.

I. PENALTIES

In any year of the Delivery Term, if the Eligible Resource over-generates in excess of 115% of contracted output, payments for such excess will be made at 50% of the base energy price applicable at the time of FIT PPA execution, subject to other pertinent limitations reflected in the FIT PPA.

System underperformance that results in less than 80% of contracted output being delivered over a consecutive two-year period shall be grounds for FIT PPA renegotiation.

J. FIT APPLICATION FEE

There is a non-refundable application fee of \$500 due at the time of FIT Application submittal.

K. FIT APPLICATION

SDCP requires the sponsor of any Eligible Resource to complete and submit the currently effective FIT Application (“Application”), which can be downloaded from SDCP’s website: [insert URL]. Any informational deficiencies or inaccuracies within a submitted Application may result in the rejection of such Application. Any determinations regarding the sufficiency, accuracy or completeness of a submitted Application will be made at SDCP’s sole discretion. Failure of a project sponsor to achieve any of the milestones reflected in a FIT Application will be grounds for rejection of such FIT Application and removal from SDCP’s FIT queue.

L. FIT APPLICATION TIMELINE

Interconnection supplemental review must be complete (i.e. a tendered Interconnection Agreement must be in place) and application for applicable permits must be submitted at the time of (or prior to) submittal of a FIT Application to SDCP.

M. FIT APPLICATION QUEUE

All FIT Applications will be accepted on a first come-first served basis. A FIT queue position shall only be established after SDCP, at its sole discretion, deems the related FIT Application to be complete and accepted. Until such notification is provided by SDCP to a FIT Applicant, no queue position shall be established.

N. CURE PERIOD

SDCP will review a FIT Application following its receipt. Based on SDCP’s review, a FIT applicant may be provided with an opportunity to correct/address certain minor errors and/or deficiencies, as solely determined by SDCP, in a FIT Application. If such opportunity is provided, the applicant will be informed by SDCP of noted errors and/or deficiencies and will be afforded a ten-day cure period to correct such deficiencies (the “cure period”). The ten-day cure period shall commence following SDCP’s communication of such errors and/or deficiencies to the FIT applicant. The FIT applicant will retain its place in the queue during such cure period. If the applicant fails to correct noted errors and/or deficiencies within the ten-day cure period, the FIT applicants place in the FIT queue will be forfeited.

O. PARTICIPATION IN OTHER SDCP PROGRAMS

An Eligible Resource taking service under this Schedule SDCP FIT may not also obtain benefits from any of the following: 1) another power purchase agreement with SDCP for deliveries from the same Eligible Resource; or 2) any Net Energy Metering (“NEM”) option for energy deliveries from the same Eligible Resource.

P. BOARD APPROVAL

The SDCP Board of Directors must approve every FIT PPA before execution.

Q. OTHER FIT PROGRAM DETAILS

A unique FIT Applicant may submit no more than one FIT Application per calendar month.



Date Received: _____

FIT Record #: _____

Assigned SDCP Staff: _____

Feed-in Tariff Application

By submitting this application, applicants agree to: 1) pursue the construction and operation of a new (not yet delivering electricity to the grid) source of renewable electricity; 2) review, understand and abide by all of the terms and conditions identified in the San Diego Community Power (SDCP) Feed-in Tariff Program (Feed-In Tariff and Power Purchase Agreement) adopted on [insert date]; 3) Review SDCP's Inclusive and Sustainable Workforce Policy ([link here](#)) to ensure compliance, and 4) immediately notify SDCP in the event any of the information provided in this application changes or ceases to be correct.

Applicant Information

PROJECT (FACILITY) NAME			
APPLICANT'S FORM OF BUSINESS & STATE OF ORGANIZATION			
APPLICANT NAME		TITLE	
APPLICANT COMPANY			
APPLICANT STREET ADDRESS		CITY	STATE ZIP
MAILING ADDRESS (If different from above)		CITY	STATE ZIP
PHONE	ALT. PHONE	EMAIL	

Eligible Resource Information *(Note: Eligible Resource Must Be Located within SDCP's service territory)*

Location Address: _____ City: _____ Zip: _____

Parcel Number: _____

Permitting Agency/Jurisdiction: _____

Renewable Resource Type (Fuel Source): _____

Proposed Generator Capacity (at point of delivery): _____ kW (AC) **Note: Size limited to less than 1 MW.**

Expected Annual Energy Output: _____ kWh

Anticipated Interconnection Agreement Execution Date: _____

Description of Physical Interconnection Point: _____

Expected Commercial Operation Date: _____

Is there San Diego Community Power service at this address? Yes No

If yes, SDG&E Account #: _____

Company Structure

If applicant is a company rather than an individual, briefly describe the ownership structure of the company, including full legal name and valid phone number of all principals: _____

Site Control

Briefly describe the site control for this project (lease, direct ownership or other): _____

Financial Plan

Briefly describe your intended financing plan for the referenced generator. Identify prospective partners and intended share of ownership assigned to each: _____

Bonus Information

Bonuses for which you are applying and will document: Local Business Local Project

Previously Developed Site Sited w/in Disadvantaged Community (*please describe below*)

Local Business: To qualify for the Local Business bonus, applicants must utilize a project developer and/or prime contractor which is headquartered within a member community of SDCP. If this bonus is desired, please list such entities, including related business addresses and business license numbers:

Local Project: To qualify for the Local Project bonus, applicants must indicate the SDCP member community in which the Eligible Resource will be located:

Previously Developed Sites: If applicable, briefly describe the location where the generator will be installed:

Sited w/in a Community of Concern: To qualify for this bonus, applicants must consult either the City of San Diego’s Climate Equity Index (CEI) or the CalEnviroScreen Disadvantaged Communities Map and indicate the Census Tract in which the Eligible Resource will be located. In the case of the CEI, the Census Tract must be designated as Very Low or Low Access _____

Generator Interconnection (SDG&E)

As the organization responsible for distribution system planning, maintenance and safety, SDG&E will be your primary point of contact for all matters related to generator interconnection. Feed-in Tariff applicants will work directly with SDG&E during the generator interconnection process. Applicants should access SDG&E’s website for additional information regarding this process:

Briefly describe your progress and timeline for completing SDG&E’s Generator Interconnection Process:

Application Queue

All applications will be accepted and queued on a first come-first served basis.

Fees

As noted under Application Checklist, the non-refundable application fee must be submitted contemporaneously with this completed Feed-in Tariff application. Please remit payment by check payable to San Diego Community Power.

Milestones and Schedule

At SDCP's sole discretion, any project that fails to demonstrate substantial progress toward completion of any outstanding development checklist item/milestone may have its Feed-in Tariff Application rejected at any time. Specified timelines for each milestone are listed in Appendix E of the Power Purchase Agreement.

The applicant is encouraged to coordinate with assigned SDCP staff throughout the process. Please submit additional requisite documents to the assigned SDCP staff member as such documents become available, referencing the applicant's assigned Feed-In Tariff (FIT) Record Number.

APPLICATION CHECKLIST

THE FOLLOWING MUST BE COMPLETED AND SUBMITTED TO SDCP AS PART OF THE FEED-IN TARIFF APPLICATION:

1. Feed-in Tariff Application (this document)
2. Tendered (draft) Interconnection Agreement or evidence project has passed Fast Track screening
3. Evidence of site control throughout the Delivery Term of the Power Purchase Agreement ("PPA") and form of site control
4. Feed-in Tariff Generation Forecast
5. Non-Refundable Application Fee – \$500.00

Submit completed Feed-in Tariff applications and payment to SDCP via mail:

San Diego Community Power
Attn: Feed-In Tariff
[Insert Address]

Upon receipt of all application materials, including the payment of applicable fees and deposit amounts, SDCP will perform a completeness review of such materials within 20 business days. Incomplete applications will be rejected and returned to applicant with no further processing. Applicant may resubmit application with correction of deficiencies. Subject to available FIT Program capacity, SDCP will approve complete applications within 30 business days of application submittal. Information received by SDCP in conjunction with this application is considered public information. SDCP will not be deemed to have accepted Applicant's offer and will not be bound by any term thereof, unless and until authorized representatives of Applicant and SDCP execute a FIT PPA. Prior to such execution, SDCP reserves the right to reject any Application, at any time and for any reason whatsoever, in its sole discretion.

Confirmation of application receipt will be delivered by email along with an assignment to an SDCP staff member and FIT Record Number. For any questions regarding this application or SDCP's Feed-in Tariff Program, please contact us at [insert phone number] or [insert email address].

By submission of this Feed-in Tariff Application, I acknowledge review and acceptance of SDCP's FIT Power Purchase Agreement Terms and Conditions available at [insert URL].

X: _____

Date: _____



Inclusive and Sustainable Workforce Policy

Purpose

The purpose of this Policy is to further the purposes of San Diego Community Power (“SDCP”) Joint Powers Agreement, including: (1) demonstrating quantifiable economic benefits to the region, including prevailing wage jobs and local workforce development; (2) supporting a stable, skilled, and trained workforce; and (3) promoting supplier and workforce diversity including returning veterans and those from communities of concern.

SDCP intends that this Policy will be updated as SDCP grows and becomes more established.

Policy

1. Inclusive Workforce

- a. SDCP Staff – To help enable a diverse and inclusive staff, SDCP will:
 - i. Engage in broad outreach in communities of concern, while adhering to SDCP’s Non-Discrimination Pledge, to ensure a diverse pool of candidates for open positions;
 - ii. Provide fair compensation and benefits that aligns with regional market indicators for compensation levels for each position;
 - iii. Be transparent about these practices and lessons learned; and
 - iv. Provide contact information for staff who can answer questions about this Policy.

- b. Supply Chain (Goods and Services) – SDCP’s commitment to inclusion also extends to its supply chain. Where and from whom SDCP purchases goods and services have important consequences for businesses, customers, and their communities. Where appropriate, an inclusive supply chain is an important driver for successful delivery of SDCP’s services to its customers, and of fair and equitable economic development generally. Where appropriate, and consistent with applicable law and other SDCP policies, including but not limited to its Procurement Policy, to support a diverse and inclusive supply chain, SDCP will strive to:
 - i. Use local businesses and provide fair compensation in the purchases of services and supplies;
 - ii. Proactively seek services from local businesses and from businesses that are taking steps to protect the environment;
 - iii. Engage in efforts to reach communities of concern, to ensure an inclusive pool of potential suppliers;
 - iv. Collect information from vendors and project developers on their status as a women, minority, disabled veteran, and/or LGBT

business enterprise (see Section 3 below; Cal. Pub. Util. Code § 366.2(m));

- v. Encourage reporting from project developers and vendors on inclusivity in business staff (see Section 3 below);
- vi. Be transparent about these practices and lessons learned; and
- vii. Provide contact information for staff who can answer questions about this Policy.

c. Inclusive Business Practices – In representing the communities that make up San Diego Community Power, SDCP will endeavor to ensure that its services and information are accessible to everyone. Therefore, SDCP will strive to:

- i. Provide information on SDCP’s services in multiple languages commonly spoken in SDCP’s service area (including mailers, tabling materials, customer service, call center, workshops and outreach events, advertisements, and other means of customer engagement);
- ii. Conduct marketing and outreach in diverse communities to increase awareness of SDCP’s services and programs;
- iii. Attend multi-cultural community events with multi-lingual materials and speakers; and
- iv. Share information about activities and initiatives that promote inclusion, access, and diverse engagement in the community.

d. Non-Discrimination Pledge – SDCP will not discriminate, and will require its contractors to 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.

2. Sustainable Workforce

- a. PPAs – San Diego Community Power will encourage the submission of information from respondents to any bidding and/or RFP/RFQ process regarding planned efforts by project developers and their contractors to:
 - i. Employ workers and use businesses from San Diego and Imperial County;
 - ii. Employ properly licensed contractors and California certified electricians;
 - iii. Utilize local apprentices, particularly graduates of San Diego and Imperial County pre-apprenticeship programs;

- iv. Pay workers the prevailing wage rates for each craft, classification and type of work performed;
- v. Display a poster at jobsites informing workers of prevailing wage requirements;
- vi. Provide workers compensation coverage to on-site workers; and
- vii. Support and use of State of California approved apprenticeship programs.

To the extent the above items are required by applicable law, SDCP shall include such requirements in its bid invitations, RFPs/RFQs, agreements, and other applicable documents.

- b. Owned Generation – *[Reserved – section will be updated to support the purposes described in this Policy once programs are further developed. This will include similar components as 2.a above including prevailing wage and inclusion of a licensed and trained workforce.]*
 - c. Feed-in-Tariffs – SDCP will encourage construction contractors or subcontractors to its Feed-In Tariff program to utilize local businesses, local apprenticeship programs and fair compensation practices including proper assignment of work to crafts that traditionally perform the work.

Moreover, SDCP will further encourage contractors and subcontractors performing work on any SDCP Feed-In Tariff project to pay at least the prevailing rate of wages and use a skilled and trained workforce. To the extent these items are required by applicable law, SDCP shall include such requirements in its applications, agreements, and other applicable documents.
 - d. Energy Efficiency/Programs – *[Reserved – section will be updated to support the purposes described in this Policy once programs are further developed. This will include similar components as 2.a above including prevailing wage and inclusion of a licensed and trained workforce.]*
 - e. Union Neutrality - SDCP will remain neutral regarding whether its employees choose to join or support labor unions and will not interfere with decisions by its contractors' and suppliers' employees about whether to join or support labor unions.
3. Reporting on Diverse Business Enterprises and Inclusive and Sustainable Workforces – Pursuant to California Public Utilities Code section 366.2(m), vendors and project developers under contract with SDCP shall be required to report on their status as women, minority, disabled veteran, and/or LGBT

business enterprises, as defined in Public Utilities Code section 8282. Reporting shall occur within one (1) month of contract execution and every January during the term of the contract, or as otherwise required by the California Public Utilities Commission. In addition, vendors and project developers shall report on the number of women, minority, disabled veteran employees performing work for SDCP and the workforce level of these groups which may include administrative assistants, technicians, and executive staff.

4. Legal Compliance – In the event that the application of this Policy to a specific SDCP project or program is limited or proscribed pursuant to applicable state or federal law, or as a condition of the receipt of state or federal funds, such law or funding condition shall control. In addition, any information collected or received under this Policy shall be used only in a manner consistent with applicable law and SDCP policies.