



## **AGENDA**

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

Thursday, August 22, 2024  
5:00 p.m.

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

**Director McCann will participate in the meeting remotely from:  
Courtyard Washington, DC/U.S. Capitol  
1325 2<sup>nd</sup> Street NE  
District of Columbia 20002**

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

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

1. Providing oral comments during a meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing \*9. Comments will be limited to three (3) minutes.

2. Written Comments. Written public comments must be submitted prior to the start of the meeting by completing a [Web Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to Members of the Board. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Members of Board, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please send it to [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org).

The public may participate using the following remote options:

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

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

## **WELCOME**

## **CALL TO ORDER**

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **SPECIAL PRESENTATIONS AND INTRODUCTIONS**

- **Proclamation for outgoing Community Advisory Committee member Eddie Price**

Recommendation: Present Proclamation to departing CAC member Eddie Price

- **Introduction of New Employees**

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

## **PUBLIC COMMENTS**

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

## **CLOSED SESSION**

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

Title: Chief Executive Officer

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

Agency designated representative(s): General Counsel

Unrepresented employee: Chief Executive Officer

## **REPORT FROM CLOSED SESSION**

## **CONSENT CALENDAR**

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

1. Approve June 27, 2024, Meeting Minutes
2. Receive and File Treasurer's Report for Period Ending May 31, 2024
3. Receive and File Update on Programs
4. Receive and File Community Advisory Committee Monthly Report
5. Receive and File Update on Human Resources
6. Receive and File Update on Customer Operations
7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs
8. Receive and File Update on IT and Data Analytics
9. Receive and File Update on Regulatory and Legislative Affairs
10. Receive and File Update on Power Services
11. Adoption of Resolution No. 2024-05, approving a revision to the San Diego Community Power's Conflict of Interest Code

## **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.*

### **12. Approve Third Amendment to the Chief Executive Officer Employment Agreement**

Recommendation: Approve Third Amendment to Chief Executive Officer Employment Agreement

### **13. Approval of Community Advisory Committee (CAC) Appointment for the City of San Diego**

Recommendation: Approve the Appointment of Luis Montero-Adams to the CAC for the City of San Diego

### **14. Quarterly Report on Community Advisory Committee**

Recommendation: Receive and File Community Advisory Committee Quarterly Report

### **15. Approve Legal Counsel Agreement with Chapman and Cutler LLP**

Recommendation: Approve Legal Counsel Agreement with Chapman and Cutler LLP

### **16. Approve contracts for vendors selected in the 2024 Request for Proposals (RFP) for Professional Services for Energy Trading Risk Management**

Recommendation:

- a. Approve a contract (Attachment A) with PCI Energy Solutions with a not-to-exceed amount of \$4,354,549 over the initial term of five years, and a yearly automatic renewal after the initial term, until SDCP provides a notice of termination, for Energy Trading Risk Management Subscription Software, Update and Support Services, and Hosting Services, and authorize execution by the Chief Executive Officer.
- b. Approve a contract (Attachment B) with cQuant.IO Inc. with a not-to-exceed amount of \$1,467,707 over three years and four months, and options for two one-year extensions, for an Energy Trading Risk Management analytics platform and associated implementation, training, and consulting, and authorize execution by the Chief Executive Officer.

**17. Board Consideration of Establishing an Ad Hoc Committee to Review Existing San Diego Community Power Board and Committee Compensation and Reimbursement Policy; and, if established, Chair Appointment of Members to the Committee**

Recommendation: Board Consideration of Establishing an Ad Hoc Committee (Committee) Consisting of No More Than Three (3) Board Members, to Review and Recommend Possible Amendments to the Board and Committee Compensation and Reimbursement Policy; and Chair appointment of Members to such Committee.

**CHIEF EXECUTIVE OFFICER REPORT**

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

**DIRECTOR COMMENTS**

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

**ADJOURNMENT**

The San Diego Community Power Board of Directors will adjourn to a regular meeting scheduled on Thursday, September 26, 2024.

***Compliance with the Americans with Disabilities Act***

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

***Availability of Board Documents***

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org) or by mail to Community Power, PO BOX 12716,

San Diego, CA 92112. The documents may also be posted on the Community Power's website. Such public records are also available for inspection, by appointment, at San Diego Community Power by contacting [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org) to arrange an appointment.



**SD COMMUNITY POWER (SDCP)  
BOARD OF DIRECTORS**

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

**REGULAR MEETING MINUTES  
June 27, 2024**

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

The Agenda Items were considered in the order presented.

**WELCOME**

**CALL TO ORDER**

Chair LaCava (City of San Diego) called the SDCP Board of Directors regular meeting to order at 5:03 p.m.

**ROLL CALL**

**PRESENT:** Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), Director Yamane (City of National City), and Vice Chair Lawson-Remer (County of San Diego) via Zoom Teleconference, AB 2449 exemption.

**ABSENT:** None

**Staff Present:** Chief Executive Officer Burns; Chief Financial Officer Dr. Washington; Chief Operating Officer Clark; General Counsel Tyagi; Director of Data Analytics and IT Singh; IT Manager Robertson; Director of Regulatory & Legislative Affairs Fernandez; Senior Legislative Manager Welch (via Zoom); Regulatory Manager Gunther; Senior Policy Manager Cissna (via Zoom); Director of Finance Manglicmot; Clerk of the Board Clerk Hernandez; and Assistant Clerk of the Board Vences

Vice Chair Lawson-Remer (County of San Diego) reported that she was participating in today's meeting via Zoom Teleconference under one of the exemptions allowed by AB 2449 and there were no individuals over the age of 18 present in the room with her.

**PLEDGE OF ALLEGIANCE**

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

**SPECIAL PRESENTATIONS AND INTRODUCTIONS**

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

Chair LaCava (City of San Diego) introduced Michelle Soto, Finance Intern. Lee Friedman, Senior Manager Strategic Partnerships, spoke on behalf of Kathleen Cramer, Public Affairs Intern.

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

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

### **PUBLIC COMMENTS**

There were no public comments.

### **CONSENT CALENDAR**

- 1. Approve May 23 and May 30, 2024, Meeting Minutes**
- 2. Receive and File Treasurer's Report for Period Ending April 30, 2024**
- 3. Receive and File Update on Programs**
- 4. Receive and File Update on Power Services**
- 5. Receive and File Update on Human Resources**
- 6. Receive and File Update on Customer Operations**
- 7. Receive and File Update on Marketing, Public Relations, and Local Government Affairs**
- 8. Receive and File Update on Community Advisory Committee**

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

Motioned by Director McCann (City of Chula Vista) and seconded by Director Aguirre (City of Imperial Beach) to approve Consent Calendar Items 1 through 8. The motion carried 7/0 by Roll Call Vote as follows:

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

NOES: None

ABSTAINED: None

ABSENT: None

### **REGULAR AGENDA**

- 9. Approval of IT Managed Services Contract with Tech Mahindra in the not-to-Exceed Amount of \$300,000 over Twelve Months with Options for two, One-Year Extensions with not-to-exceed Amounts of \$300,000 for each Subsequent Year**

Director of Data Analytics and IT Singh and IT Manager Robertson provided an overview of IT Managed Services Contract.



Board questions and comments ensued.

There were no public comments on Item No. 9.

Motioned by Director McCann (City of Chula Vista) and seconded by Director Hinze (City of Encinitas) to approve a contract in substantially similar form to Attachment A for Managed IT Services and Support with Tech Mahindra in the not-to-exceed amount of \$300,000 over twelve months with options for two, one-year extensions with not-to-exceed amounts of \$300,000 for each subsequent year. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)  
NOES: None  
ABSTAINED: None  
ABSENT: None

## **10. Regulatory and Legislative Affairs Update**

Director of Regulatory & Legislative Affairs Fernandez, Senior Legislative Manager Welch, Regulatory Manager Gunther, and Senior Policy Manager Cissna provided an update on Legislative Affairs.

There were no public comments on Item No. 10.

Following Board questions and comments, no action was taken.

## **11. Approval of Second Revision of Reserves Policy**

Director of Finance Manglicmot provided an overview of the Second Revision of Reserve Policy.

Director Parent expressed concerns on the language in the proposed Reserves Policy on page 2 under "Conditions for Use of Reserves."

Director McCann concurred with Director Parent's concerns and asked staff to work on an updated version to bring back for approval.

There were no public comments on Item No. 11.

Motioned by Director McCann (City of Chula Vista) and seconded by Director Parent (City of La Mesa) to exclude No. 2, "Provide necessary funds to make up for unanticipated revenue shortfalls;" from the policy and approve the rest of the Second Revision to the Financial Reserves Policy. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)  
NOES: None  
ABSTAINED: None  
ABSENT: None

## **12. Approve Investment Policy Revision**

CFO/Treasurer Dr. Washington and Director of Finance Manglicmot provided an overview of the Investment Policy Revision.

There were no public comments on Item No. 12.

Board questions and comments ensued.

Motioned by Director McCann (City of Chula Vista) and seconded by Director Aguirre (City Imperial Beach) to approve the Investment Policy Revision. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane  
NOES: None  
ABSTAINED: None  
ABSENT: None

## **13. Approval of the FY 2024-25 Operating Budget, the FY 2024-25 Capital Budget, and the FY 2025-29 Capital Investment Plan**

CFO/Treasurer Dr. Washington provided an overview of the FY 2024-25 Operating Budget, the FY 2024-25 Capital Budget, and the FY 2025-29 Capital Investment Plan, including budget development, budget principles, budget highlights, budget summary, budget changes by category, and budget Community Choice Aggregator (CCA) Comparison.

Board questions and comments ensued.

There were no public comments on Item No. 13.

Motioned by Director McCann (City of Chula Vista) and seconded by Director Aguirre (City of Imperial Beach) to approve Resolution No. 2024-03, adopting the FY 2024-2025 Operating Budget, the FY 2024-2025 Capital Budget, and the FY 2025-2029 Capital Investment Plan. The motion carried 7/0 by Roll Call Vote as follows:

AYES: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)  
NOES: None  
ABSTAINED: None  
ABSENT: None

## **CHIEF EXECUTIVE OFFICER REPORT**

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

## **DIRECTOR COMMENTS**

Director Hinze shared that she will be on maternity leave and is expected to return in October. Her alternate, Mr. Kranz, will be attending Board meetings in her absence.

Director Parent congratulated SD Community Power on hiring Patrick Welch.

Director Yamane thanked all staff, the CEO, the Executive Team, and the Directors and expressed looking forward to a successful 2025.

### **CLOSED SESSION**

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

Title: Chief Executive Officer

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

Agency designated representative(s): General Counsel

Unrepresented employee: Chief Executive Officer

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

The meeting recessed to Closed Session at 6:30 p.m.

The meeting reconvened to Open Session at 7:27 p.m.

### **ROLL CALL**

**PRESENT:** Chair LaCava (City of San Diego), Director McCann (City of Chula Vista), Director Hinze (City of Encinitas), Director Aguirre (City of Imperial Beach), Director Parent (City of La Mesa), and Director Yamane (City of National City)

**ABSENT:** Vice Chair Lawson-Remer (County of San Diego)

**Staff Present:** General Counsel Tyagi, Clerk of the Board Clerk Hernandez, and Assistant Clerk of the Board Vences

### **REPORT FROM CLOSED SESSION**

General Counsel Tyagi announced that there were no reportable actions from the Closed session.

### **ADJOURNMENT**

Chair LaCava (City of San Diego) adjourned the meeting at 7:28 p.m. to the next regular Board meeting scheduled on Thursday, August 22, 2024, at 5:30 p.m.

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Maricela Hernandez, MMC, CPMC  
Clerk of the Board



## **fSAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 2**

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To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Treasurer's Report for Period Ending May 31, 2024

Date: August 22, 2024

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### **RECOMMENDATION**

Receive and File Treasurer's Report for Period Ending May 31, 2024.

### **BACKGROUND**

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

SDCP has prepared its year-to-date financial statements for the eleven-month period ended May 31, 2024, along with budgetary comparisons.

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

On February 22, 2024, the SDCP Board of Directors (Board) approved a mid-year budget amendment for Fiscal Year 2023-24 that included net operating revenues of \$1,304,274,067, total expenses of \$1,071,601,284, and a resulting net position of \$232,672,783. Given that the Board approval occurred on February 22, 2024, the review of the Treasurer's Report for period ending April 30, 2024, and reports for the remaining fiscal year will include a comparison against the mid-year budget amendment adopted by the Board.

### **ANALYSIS AND DISCUSSION**

Actual financial results for the period ended 5/31/24: \$1.102 billion in net operating revenues were reported compared to \$1.176 billion budgeted for the period. \$967.72 million in total expenses were reported (including \$937.99 million in energy costs)

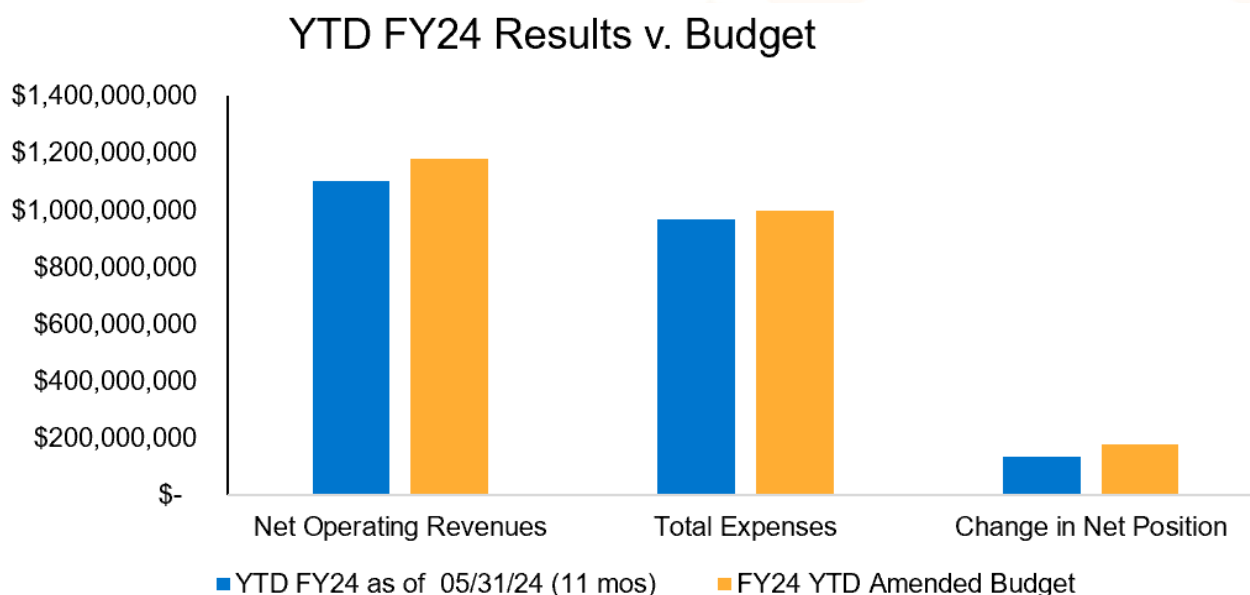
compared to \$997.59 million budgeted for the period (including \$950.51 billion budgeted for energy costs). After expenses, SDCP's change in net position of \$134.04 million was reported year-to-date for Fiscal Year 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison					
	YTD FY24 as of 05/31/24 (11 mos)	FY24 YTD Amended Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 1,101,760,628	\$ 1,176,181,390	\$ (74,420,762)	94%	
Total Expenses	\$ 967,719,239	\$ 997,590,323	\$ (29,871,084)	97%	
<b>Change in Net Position</b>	<b>\$ 134,041,389</b>	<b>\$ 178,591,067</b>	<b>\$ (44,549,678)</b>	<b>-25%</b>	

- Net operating revenues finished \$74.42 million (or 6.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather in the summer months of calendar year 2023.
- Operating expenses finished \$29.87 million (or 3.0 percentage points) under the budget similarly due to lower-than-expected customer load correlated with the cooler weather in the summer months of calendar year 2023.

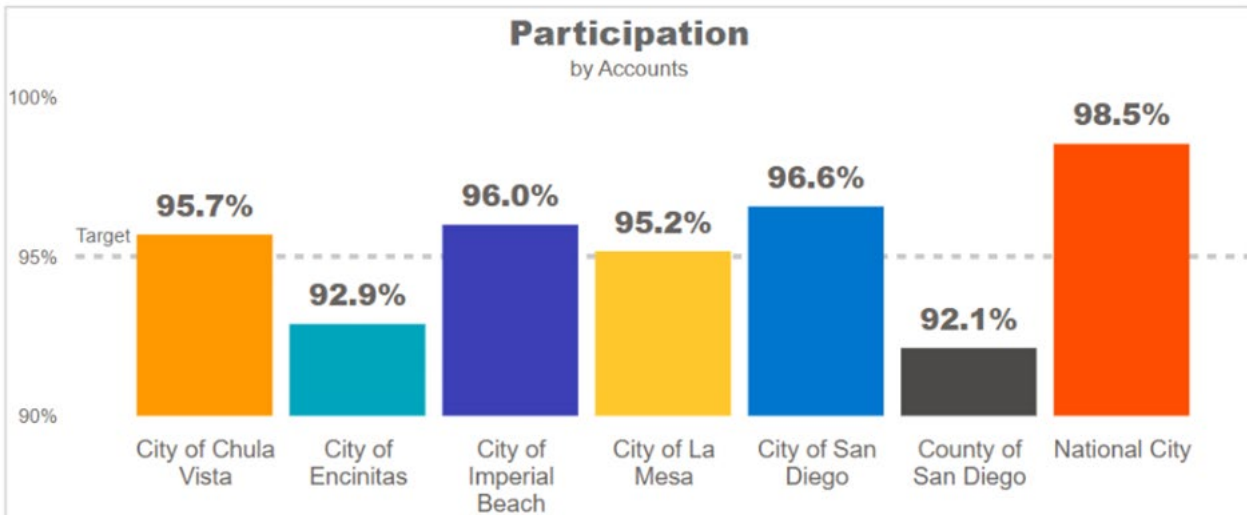
Figure 1: Proforma versus Actual Results



For the eleven-month period ending 5/31/24, SDCP contributed \$134,041,389 to its net position compared to the expected contribution of \$178,591,067 per the Fiscal Year 2023-24 amended budget. Total SDCP reserves at the end of the period were \$336,026,790 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$448,526,790. SDCP has a total Fiscal Year 2023-24 year-end

reserve target of \$524,984,866, which is equivalent to 180-days of total operating expenses as set in SDCP's Reserve Policy and Strategic Goals.

Figure 2: Participation Rates as of 6/1/2024



Jurisdiction	Active	Eligible	Opt Outs	Participation
<b>City of Chula Vista</b>	94,079	98,323	4,244	95.7%
<b>City of Encinitas</b>	26,532	28,566	2,034	92.9%
<b>City of Imperial Beach</b>	10,519	10,958	439	96.0%
<b>City of La Mesa</b>	28,049	29,476	1,427	95.2%
<b>City of San Diego</b>	601,983	623,408	21,425	96.6%
<b>County of San Diego</b>	174,925	189,906	14,953	92.1%
<b>National City</b>	19,236	19,528	287	98.5%
<b>Total</b>	<b>955,323</b>	<b>1,000,165</b>	<b>44,809</b>	<b>95.5%</b>

The Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. The participation rate for SDCP reflects full enrollment of current member agencies. We are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting the state of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 6/1/2024.

Figure 3: State of SDCP Arrearages as of 7/01/2024

Balances over 120 days

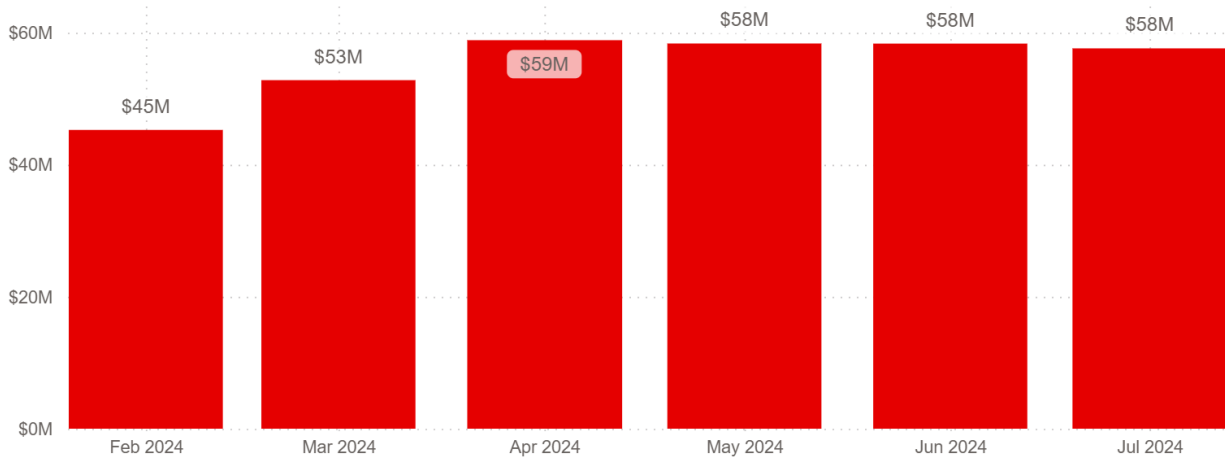
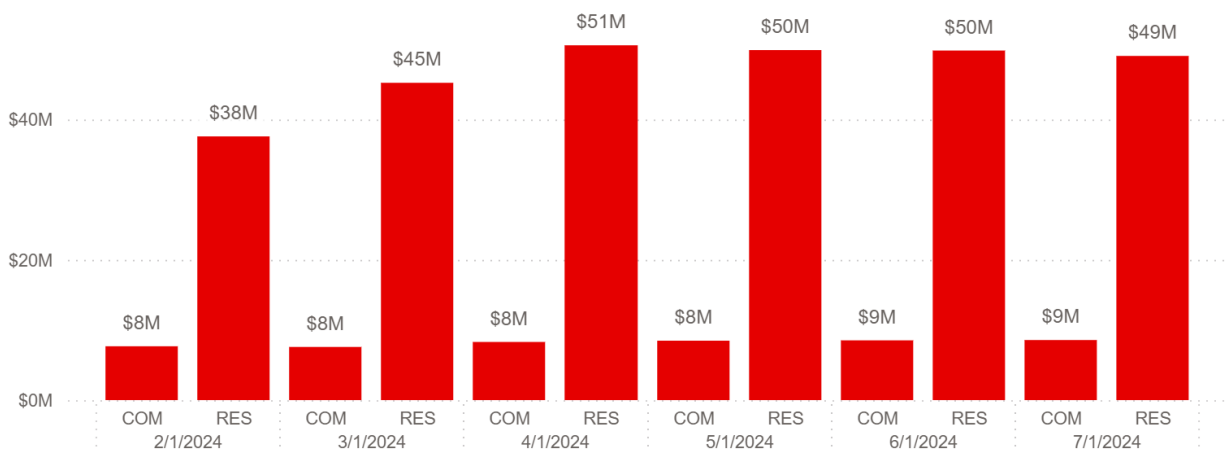


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 7/01/2024

Balances over 120 days - RES vs COM



## COMMITTEE REVIEW

N/A

## FISCAL IMPACT

N/A

## ATTACHMENT

Attachment A: 2024 Year-to-Date Period Ended May 31, 2024, Financial Statements



## ACCOUNTANTS' COMPILATION REPORT

Management  
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of May 31, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

*Maher Accountancy*

San Rafael, CA  
July 2, 2024



**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF NET POSITION**  
**As of May 31, 2024**

**ASSETS**

Current assets	
Cash and cash equivalents - unrestricted	\$ 336,026,790
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	50,544,242
Accrued revenue	33,274,437
Prepaid expenses	13,061,991
Other receivables	1,243,151
Deposits	11,631,774
Total current assets	<u>446,282,385</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Lease asset, net of amortization	1,205,999
Capital assets, net of depreciation	126,726
Total noncurrent assets	<u>2,479,725</u>
Total assets	<u>448,762,110</u>

**LIABILITIES**

Current liabilities	
Accrued cost of electricity	111,036,753
Accounts payable	4,440,940
Other accrued liabilities	1,255,965
State surcharges payable	354,780
Deposits - energy suppliers	4,932,500
Interest and finance costs payable	188,188
Lease liability	959,602
Total current liabilities	<u>123,168,728</u>
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	408,548
Total noncurrent liabilities	<u>1,032,548</u>
Total liabilities	<u>124,201,276</u>

**NET POSITION**

Restricted for security collateral	1,647,000
Unrestricted	322,913,834
Total net position	<u><u>\$ 324,560,834</u></u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**Eleven Months Ended May 31, 2024**

**OPERATING REVENUES**

Electricity sales, net	\$ 1,100,503,693
Grant revenue	983,500
Other income	1,159,764
Total operating revenues	<u>1,102,646,957</u>

**OPERATING EXPENSES**

Cost of electricity	938,876,105
Contract services	18,091,586
Staff compensation	10,366,511
Other operating expenses	3,003,051
Depreciation and amortization	653,685
Total operating expenses	<u>970,990,938</u>
Operating income	<u>131,656,019</u>

**NON-OPERATING REVENUES (EXPENSES)**

Interest income	8,484,511
Interest and financing expense	(1,592,027)
Nonoperating revenues (expenses), net	<u>6,892,484</u>

**CHANGE IN NET POSITION**

	138,548,503
Net position at beginning of year	186,012,331
Net position at end of year	<u>\$ 324,560,834</u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS**  
**Eleven Months Ended May 31, 2024**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 1,208,166,990
Receipts of supplier security deposits	37,126,179
Receipts from wholesale sales	18,201,861
Other operating receipts	2,143,264
Payments to suppliers for electricity	(918,254,005)
Payments for goods and services	(20,541,863)
Payments of staff compensation and benefits	(9,971,134)
Payments for deposits and collateral	(14,740,443)
Payments of state surcharges	(2,321,269)
Net cash provided by operating activities	<u>299,809,580</u>

**CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES**

Principal payments - bank note	(35,730,000)
Interest and related expense payments	(1,909,624)
Net cash provided (used) by non-capital financing activities	<u>(37,639,624)</u>

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Payments of lease liability	(519,707)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	<u>(591,257)</u>

**CASH FLOWS FROM INVESTING ACTIVITIES**

Interest income received	<u>8,264,211</u>
Net change in cash and cash equivalents	269,842,910
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	<u>\$ 337,673,790</u>

**Reconciliation to the Statement of Net Position**

Cash and cash equivalents (unrestricted)	\$ 336,026,790
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	<u>\$ 337,673,790</u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS (continued)**  
**Eleven Months Ended May 31, 2024**

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

Operating income	\$ 131,656,019
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	653,685
(Increase) decrease in:	
Accounts receivable, net	59,969,489
Accrued revenue	45,518,347
Prepaid expenses	17,465,507
Other receivables	(789,136)
Deposits	6,024,576
Increase (decrease) in:	
Accrued cost of electricity	33,691,410
Accounts payable	4,001,674
Other accrued liabilities	(2,538,682)
State surcharges payable	(145,809)
Deposits - energy suppliers	4,302,500
Net cash provided by operating activities	<u><u>\$ 299,809,580</u></u>



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended May 31, 2024, 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  
July 2, 2024

**SAN DIEGO COMMUNITY POWER  
OPERATING FUND  
BUDGETARY COMPARISON SCHEDULE  
Eleven Months Ended May 31, 2024**

	<b>2023/24 YTD Amended Budget</b>	<b>2023/24 YTD Actual</b>	<b>2023/24 YTD Amended Budget Variance (Under) Over</b>	<b>2023/24 YTD Actual/ Amended Budget %</b>	<b>2023/24 Annual Amended Budget</b>	<b>2023/24 Amended Budget Remaining</b>
<b>REVENUES AND OTHER SOURCES</b>						
Gross Ratepayer Revenues	1,231,603,550	\$ 1,146,358,014	(85,245,536)	93%	\$ 1,365,732,007	\$ 219,373,993
Less: Uncollectible Customer Accounts	(55,422,160)	(45,854,321)	9,567,839	83%	(61,457,940)	(15,603,619)
Grant Revenue	-	983,500	983,500		-	(983,500)
Other Income		273,435	273,435		-	(273,435)
Total Revenues and Other Sources	<u>1,176,181,390</u>	<u>1,101,760,628</u>	<u>(74,420,762)</u>		<u>1,304,274,067</u>	<u>202,513,439</u>
<b>OPERATING EXPENSES</b>						
Cost of Energy	950,511,158	937,989,777	(12,521,381)	99%	1,020,844,552	82,854,775
Professional Services and Consultants	20,483,956	16,786,780	(3,697,176)	82%	22,250,657	5,463,877
Personnel Costs	10,672,040	10,366,511	(305,529)	97%	11,603,394	1,236,883
Marketing and Outreach	2,693,727	1,760,040	(933,687)	65%	2,925,978	1,165,938
General and Administration	6,273,940	2,239,942	(4,033,998)	36%	6,812,564	4,572,622
Programs	106,333	826,883	720,550	778%	115,500	(711,383)
Total Operating Expenses	<u>990,741,154</u>	<u>969,969,933</u>	<u>(20,771,221)</u>		<u>1,064,552,645</u>	<u>94,582,712</u>
Operating Income (Loss)	<u>185,440,236</u>	<u>131,790,695</u>	<u>(53,649,541)</u>		<u>239,721,422</u>	<u>107,930,727</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>						
Investment Income	-	8,484,511	8,484,511		-	(8,484,511)
Interest and Related Expenses	(2,194,169)	(1,578,817)	615,352	72%	(2,393,639)	(814,822)
Transfer to Capital Investment Program	(4,655,000)	(4,655,000)	-	100%	(4,655,000)	-
Total Non-Operating Revenues (Expenses)	<u>(6,849,169)</u>	<u>2,250,694</u>	<u>9,099,863</u>		<u>(7,048,639)</u>	<u>(9,299,333)</u>
<b>NET CHANGE</b>	<u>\$ 178,591,067</u>	<u>\$ 134,041,389</u>	<u>\$ (44,549,678)</u>		<u>\$ 232,672,783</u>	<u>\$ 98,631,394</u>



## SAN DIEGO COMMUNITY POWER Staff Report – Item 3

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To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Programs

Date: August 22, 2024

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### RECOMMENDATION

Receive and file update on customer energy programs.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

#### Building Electrification

##### ***California Energy Commission (“CEC”) Equitable Building Decarbonization Direct Install (“EBD DI”) Program***

Status: On August 7, 2024, the CEC announced via a Notice of Proposed Award that the County of Los Angeles was selected to be the program administrator of the EBD DI program for the Southern region. The EBD DI program will establish a network of southern California public agencies and community-based organizations to equitably electrify homes throughout southern California. Community Power was included as a supporting partner in the County of Los Angeles’ proposal. Due to cuts to the EBD DI program, the proposed amount for the program for the Southern region has been reduced to \$328.7 million from the original budget of \$487.8 million.

Next Steps: The County of Los Angeles is expected to execute an agreement with the CEC in Q4 CY 2024. Staff anticipate seeking approval from the Board sometime in Q1 CY 2025 for an agreement between Community Power and the County of Los Angeles to support the development of the program in Community Power’ service territory.

### ***U.S. Environmental Protection Agency (“EPA”) Climate Pollution Reduction Grant (“CPRG”) Program***

On July 22, 2024, the EPA announced their selections for the CPRG Implementation Grants. Unfortunately, the grant application led by the San Diego Association of Governments (“SANDAG”), of which Community Power was a partner, was not selected for funding. The EPA selected 25 applications in the nation; one application from California was selected for funding. The South Coast Air Quality Management District will receive close to \$500 million to “decarbonize transportation and goods movement in Los Angeles and Long Beach.” Staff will continue to work with local agencies on future funding opportunities.

### **Commercial Programs**

#### ***Commercial Application Assistance Pilot***

Status: In Q1 2024, Staff developed a pilot to support Community Power’s commercial customers with identifying and applying to existing non-SDCP customer energy programs such as those offered by regional, state, and federal entities. Staff received three bids in response to the Invitation to Bid issued in April 2024. TRC Solutions, Inc. (“TRC”) was selected to implement the pilot based on their expertise, experience, approach to accomplishing the work, and thoroughness of their bid.

Community Power’s commercial application assistance pilot launched in early July 2024. The pilot helps participating commercial customers identify opportunities for bill savings, particularly in the summer months. Community Power’s Key Account Services team is responsible for making connections with interested commercial customers and TRC’s support staff. Once interested commercial customers are engaged, TRC conducts a high-level desktop review of the customer’s energy usage, reviews the customer’s goals and business operations, and recommends program opportunities. A subset of customers will be offered support in applying for programs. Community Power’s Key Account Services team has established contact with four customers that are in the process of participating in the pilot.

Direct outreach and communications from Community Power’s Key Account Services team are the primary method for customers to learn about the pilot. Additionally, Staff presented the pilot at the Key Account Engagement Forum Community Power hosted on August 16, 2024.

Next Steps: Staff will monitor the uptake and success of the pilot to determine whether to scale it into a program offering.

### **Energy Efficiency**

#### ***California Department of Food and Agriculture (“CDFA”) Healthy Refrigeration Grant Program***

Status: In late December 2023, Community Power was awarded a grant from the CDFA [Healthy Refrigeration Grant Program](#). Community Power will use the grant funds to



launch a pilot program that will provide energy-efficient refrigeration equipment and additional technical assistance to corner stores and/or small businesses in its service territory. Staff are currently working on procuring the vendors necessary to implement the pilot program. Staff released a Request for Proposals (“RFP”) for an equipment vendor on July 23, 2024 and the RFP closed on August 20, 2024.

*Next Steps:* Following conclusion of the equipment vendor procurement process, Staff anticipate bringing the contract for approval to the September 2024 Board meeting. Staff will continue to develop program materials in anticipation of its launch in Q4 CY 2024.

### ***FLEXmarket Pilot***

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

### ***Regional Energy Network (“REN”) Formation***

*Status:* The San Diego Regional Energy Network (“SDREN”) Business Plan Application was submitted to the California Public Utilities Commission (“CPUC”) on January 5, 2024, in partnership with the County of San Diego. On August 1, 2024, the CPUC voted to approve SDREN, providing funding for the various program offerings included in the [SDREN Business Plan Application](#). The SDREN portfolio of energy efficiency programs include two workforce education and training (“WE&T”) programs, three commercial sector programs, two residential sector programs, two public sector programs, and one codes and standards program. The SDREN programs will be offered throughout San Diego County and are expected to be available to customers by the end of 2025.

*Next Steps:* Over the next four months, Staff will prioritize activities to meet CPUC requirements as directed in the [SDREN Decision](#) (i.e., file an updated cost effectiveness forecast for the Market Access Program, post implementation plans, and submit a joint cooperation memo with SDG&E). Additionally, over the next six months, Staff will continue to prepare for the launch of the SDREN programs by hiring staff, developing and releasing solicitations for program implementors, and developing a charter for the SDREN Advisory Committee based on input from the Inaugural Advisory Committee.

### ***Flexible Load***

#### ***Flexible Load Strategy***

*Status:* The Distributed Energy Resources Management System (“DERMS”) RFP closed on July 19, 2024. A total of six bids were received. After review and scoring the bids, Staff selected two vendors for demonstrations with one backup vendor. The top two vendors were interviewed to clarify proposal elements.

*Next Steps:* Staff are scheduling product demonstrations with the top two vendors in late August 2024. Staff anticipate bringing the DERMS vendor agreement to the Board for approval by Q4 CY 2024.

### ***Vehicle-Grid Integration (“VGI”) Strategy***

Status: Staff released an RFP for the Managed Charging (V1G) software solution on July 29, 2024. Multiple bidders submitted questions in response to the RFP and Staff posted Q&A responses on August 12, 2024. Staff are hiring a Program Manager to lead VGI initiatives.

Next Steps: The V1G RFP is scheduled to close on August 23, 2024. Following the RFP close, staff will review and score bids and schedule interviews and product demonstrations before selecting a vendor solution. Staff anticipate bringing the V1G vendor agreement to the Board for approval by Q4 CY 2024.

## **Grant Programs**

### ***Community Clean Energy Grant Program***

Status: The grant evaluation process for the FY 2023-24 grant cycle concluded in May 2024. Grantees were notified of their awards in June 2024 and grant agreements were executed in July 2024. Staff held a public announcement event on August 19, 2024.

Next Steps: Future updates on this program will be provided by Community Power's Public Affairs team.

## **Solar and Energy Storage**

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

Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program. Staff anticipate bringing back an item to the Board by Q4 CY 2024 to update the tariff with support for virtual and aggregation versions of NBT.

### ***Solar Battery Savings Program***

Status: The Solar Battery Savings Program began enrolling contractors and battery manufacturers in July 2024 and began accepting applications on July 29, 2024. To date, applicants have submitted over 800 applications, including 500 within the first 24 hours. Applications have been received from all jurisdictions within Community Power's service territory, with initial analysis indicating a proportional distribution based on population. The program currently has 37 approved contractors actively participating and 9 approved battery manufacturers. The program remains open to additional contractors and battery manufacturers interested in joining.

The [Solar Battery Savings webpage](#) provides a directory of approved local contractors and battery manufacturers, the program manual, FAQs, and real-time updates on the budget. A web-based portal for contractors and battery manufacturers allows contractors to submit applications, access an interactive Communities of Concern Geographic Information Systems ("GIS") map for incentive level determination, and view program files in a fillable format. Additionally, contractors can track application status and remaining program budget through the portal.

Next Steps: Staff are continuing to review applications and improve contractor communications and program processes. The web-based portal will be available for approved battery manufacturers to access and submit performance data in the upcoming

weeks. Staff anticipate presenting an update on the program at the September 2024 Board meeting.

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

Status: GRID Alternatives (“GRID”) has continued to identify eligible homes to participate in the DAC-SASH Readiness Pilot. As of June 2024, GRID has identified 14 homes that may be eligible and is working to enroll them into the pilot and ultimately DAC-SASH.

Next Steps: GRID will continue to identify additional homes through the rest of the summer. Roof repair/replacement work may be completed simultaneously for eligible homes and may continue into March 2025.

### ***Solar for Our Communities***

Status: The Final Decision for the Green Access Program (“GAP”) was approved by the CPUC on May 30, 2024. Staff submitted the [Annual Budget Advice Letter](#) (“ABAL”) to the CPUC on July 8, 2024.

On August 6, 2024, Staff met with the Energy Contracts Working Group (“ECWG”) to present projects for shortlist consideration. The ECWG approved approximately 5 MW of Solar for Our Communities-eligible projects, representing 25% of Community Power’s total allocation for the program. Staff will proceed with the notification process for shortlisted projects.

Next Steps: Staff will submit a Tier 2 Advice Letter updating Community Power’s Disadvantaged Communities Green Tariff schedule to incorporate the Final Decision’s modifications within 120 days of the adoption of the Final Decision (by September 27, 2024). Staff will also present awarded bids to the Board for approval prior to submitting executed Power Purchase Agreements (“PPAs”) to the CPUC via a Tier 2 Advice Letter for approval no later than 180 days following the notification of selected bidders. Projects are expected to come online by mid-2026.

### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 4

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

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### RECOMMENDATION

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

### BACKGROUND

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

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

At the direction of the Chief Executive Officer, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. Since the July 25, 2024 Board of Directors meeting was canceled, the next quarterly update will take place during its August 22, 2024 regular meeting.

### ANALYSIS AND DISCUSSION

During the July 11, 2024, regular CAC meeting:

- After approving the consent agenda, which included updates on Marketing, Public Relations and Local Government Affairs, Customer Operations, Programs, and Regulatory and Legislative Affairs, the CAC held elections for its Fiscal Year 2024-2025 Officers. The results were as follows:
  - Chair: Matthew Vasilakis (City of San Diego)
  - Vice-Chair: Lawrence Emerson (National City)
  - Secretary: Aida Castañeda (National City)

- The CAC also received training on the Ralph M. Brown Act and Community Power's Conflict of Interest and Ethical Conduct Policy.
- Committee members shared announcements on coalition-building around the County of San Diego's Climate Action Plan, and meetings and events of local organizations such as the Electric Vehicle Association and the Sherman Heights Community Center. Members had no recommendations for items to be heard by the Board of Directors.

The CAC held an August recess. Its next meeting will take place on September 12, 2024.

As of August 13, 2024, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of San Diego, which is expected to be filled during the August 22, 2024 Board of Directors regular meeting. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies continue to be advertised at meetings, community events, and through Community Power's social media.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

There is no fiscal impact associated with this item.

### **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 5

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To: San Diego Community Power Board of Directors

From: Chandra Pugh, Director of People

Via: Karin Burns, Chief Executive Officer

Subject: Update on Human Resources

Date: August 22, 2024

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### RECOMMENDATION

Receive and File the Update on Human Resources.

### BACKGROUND

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

#### Hiring:

This month, Community Power welcomed our new Data Scientist Hanlu Huang, IT Systems Engineer Jose Tapia, and Marketing Manager, Vincenzo Tarantino. We also welcomed our new Project Operations and Proposal Manager, Jaclyn Vogel and Human Resources Coordinator Linda Viernes this week.

#### Open positions:

Data Engineer  
Program Manager - Vehicle Grid Integration  
Sr. Quantitative Energy Analyst  
Sr. REN Program Managers (2)  
Origination Manager: Virtual Interviews  
Public Outreach Coordinator  
Director of Portfolio Management  
Marketing Manager  
Senior Counsel/Assistant General Counsel  
Rates Analyst  
Finance Manager SD REN  
Sr. Cyber Security Analyst



### Internship News:

We were excited to organize our inaugural Internship Networking Event for our current summer interns. Our interns Michelle Soto and Kathleen Cramer applied to join Community Power in partnership with climate organizations developing a pipeline of diverse talent. Participating event attendees from local community-based organizations spent time mingling and learning more about the intern experience and our own newly created internship program which we anticipate will launch next summer.

### Benefits Open Enrollment:

Open enrollment is a period when employees can make changes to their benefits, including medical, dental and vision insurance. The timing of open enrollment varies by company, but it often begins one to two months before coverage begins. The HR team is facilitating two open enrollment periods this year to maintain coverage through December 31st while transitioning to calendar year to align our process with most other employers in January of 2025.

The HR team worked with our carrier liaison to analyze costs and present renewal rates and carrier options to the executive team. We also rolled out a new benefit portal which created a more seamless process for employees to compare costs and enroll efficiently and quickly.

### Workplace Safety:

Community Power has contracted with Ed Sherman Consultants to provide comprehensive training, threat assessment and ongoing security consulting services related to crises management and employee safety. We look forward to working with Ed and his team to assess and address short-term and long-term needs for our organization including taking all steps necessary to maintain our Workplace Violence Prevention Plan (WVPP) which was implemented on July 1<sup>st</sup>, 2024, in accordance with CA SB533.

Our WPP document and incident log is available to staff and located on our HR website. The plan will be reviewed periodically to ensure relevant revisions and updates are captured accordingly.

## **DISCUSSION AND ANALYSIS**

N/A

## **COMMITTEE REVIEW**

N/A

## **FISCAL IMPACT**

N/A

## **ATTACHMENTS:**

N/A

## SAN DIEGO COMMUNITY POWER

### Staff Report – Item 6

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To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: August 22, 2024

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### RECOMMENDATION

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

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Enrollment Update

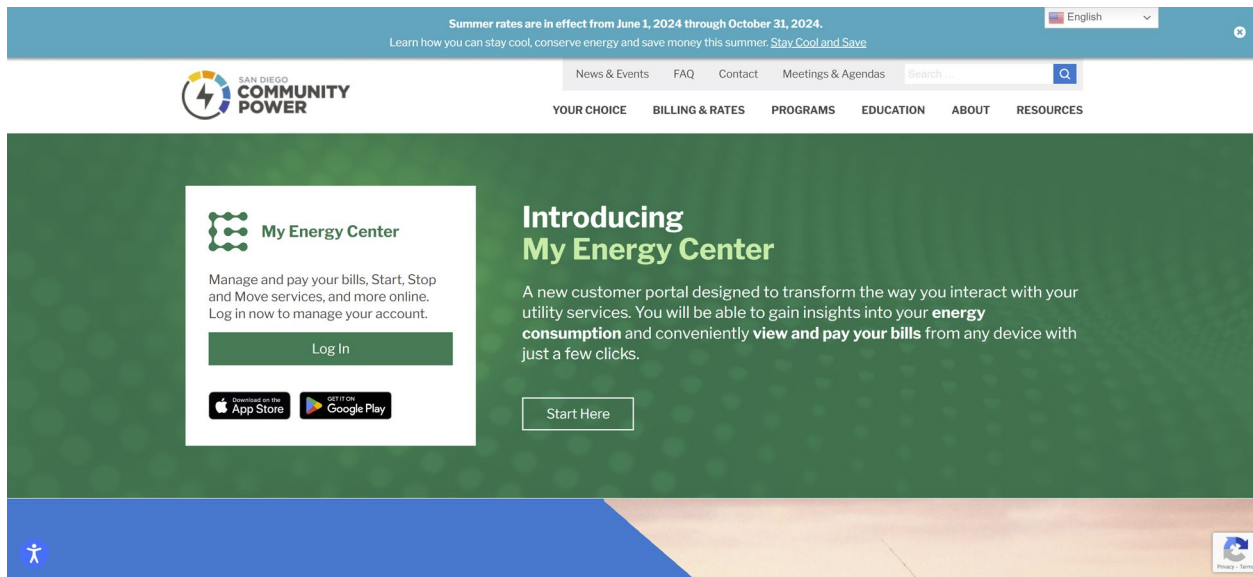
As of August 05, 2024, SDCP is serving a cumulative total count of **957,750** active accounts.

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

#### B) My Energy Center Update

As of August 4, 2024 SDG&E's My Account portal became My Energy Center. The [link to this new portal](#) is available on both SDG&E and Community Power's websites. Please note that customers will still be able to use their SDG&E My Account login credentials to view their SDG&E and Community Power account information and make payments through My Energy Center. On SD Community Power's homepage, there currently is a banner with My Energy Center to allow our customers to easily access the new portal. See the snippet below for reference:





### C) Customer Participation Tracking

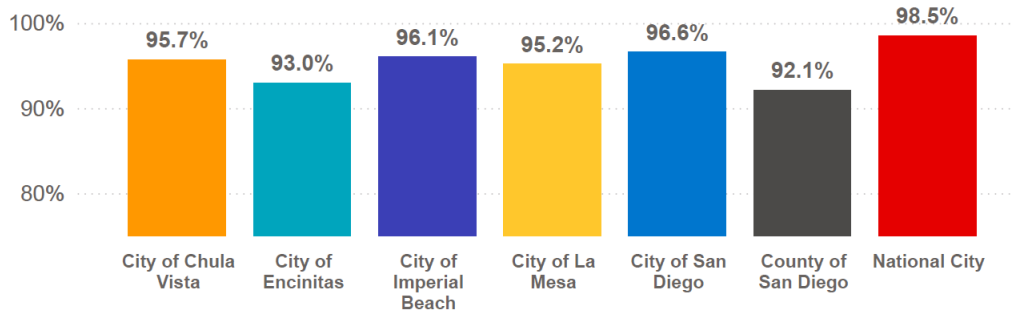
With the roll out of PowerBase and Power100 Green+ as of 7/1/2024, staff and Calpine have worked together to completely recalibrate and revamp our customer participation statistics as currently we no longer have just two service options but four and customers are able to elect their participation in any of the 4 options provided they meet the eligibility criteria. The below charts summarize these actions accordingly as of August 05, 2024:

**Enrolled  
Accounts**  
957,750

**Participation  
Rate**  
95.5%

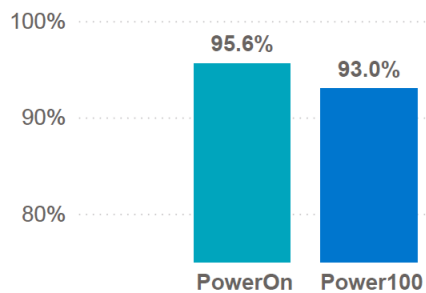
## Participation

### Participation by Jurisdiction

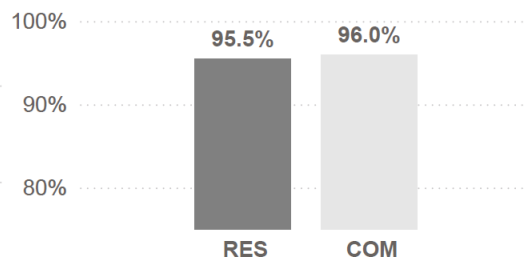


Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,768	94,515	95.7%
City of Encinitas	Power100	28,608	26,598	93.0%
City of Imperial Beach	PowerOn	10,965	10,532	96.1%
City of La Mesa	PowerOn	29,519	28,101	95.2%
City of San Diego	PowerOn	624,511	603,205	96.6%
County of San Diego	PowerOn	190,462	175,503	92.1%
National City	PowerOn	19,586	19,296	98.5%
<b>Total</b>		<b>1,002,419</b>	<b>957,750</b>	<b>95.5%</b>

### Participation by Default Service Option



### Residential vs Commercial Participation



## Service Option

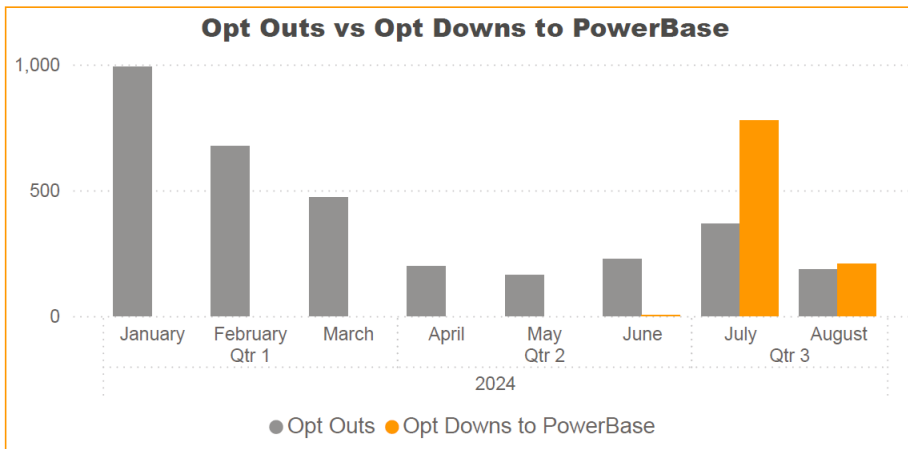
PowerBase	
Enrolled	<b>944</b>
Participation	<b>0.1%</b>

PowerOn	
Enrolled	<b>922,617</b>
Participation	<b>96.3%</b>

Power100	
Enrolled	<b>34,189</b>
Participation	<b>3.6%</b>

## Service Option Enrollment Summary

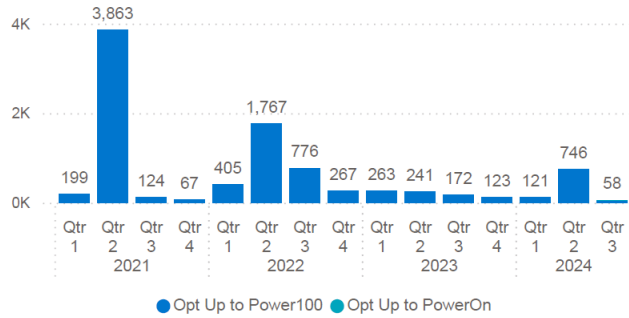
Jurisdiction	Service Option Default	Enrolled Accounts	PowerBase Enrolled	PowerBase Participation	PowerOn Enrolled	PowerOn Participation	Power100 Enrolled	Power100 Participation
City of Chula Vista	PowerOn	94,515	83	0.1%	93,530	99.0%	902	1.0%
City of Encinitas	Power100	26,598	26	0.1%	449	1.7%	26,123	98.2%
City of Imperial Beach	PowerOn	10,532	15	0.1%	10,438	99.1%	79	0.8%
City of La Mesa	PowerOn	28,101	27	0.1%	27,814	99.0%	260	0.9%
City of San Diego	PowerOn	603,205	472	0.1%	596,714	98.9%	6,019	1.0%
County of San Diego	PowerOn	175,503	307	0.2%	174,422	99.4%	774	0.4%
National City	PowerOn	19,296	14	0.1%	19,250	99.8%	32	0.2%
<b>Total</b>		<b>957,750</b>	<b>944</b>	<b>0.1%</b>	<b>922,617</b>	<b>96.3%</b>	<b>34,189</b>	<b>3.6%</b>



## Opt Up History

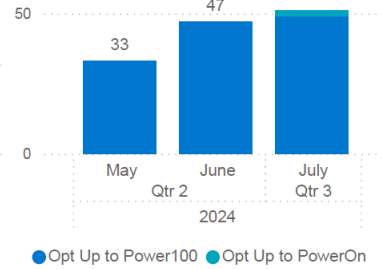
<b>Total Opt Ups</b>	<b>Opt Ups Current</b>
9,172	8,091

### Opt Ups Quarterly



### Opt Ups Monthly

Last 3 Calendar Months



### Opt Ups by Jurisdiction

Year	City of Chula Vista	City of Encinitas	City of Imperial Beach	City of La Mesa	City of National City	City of San Diego	County of San Diego	Total
2021	709	18	60	155		3,306	4	4,252
2022	175	1	29	118		2,887		3,210
2023	61	1	11	19	12	488	207	799
2024								
Qtr 1	5		2	3	17	74	20	121
Qtr 2	30	1	3	1	7	130	576	746
Qtr 3								
July	3			1		41	6	51
August						7		7
Total	981	21	105	297	36	6,922	813	9,172

### Opt Ups by Customer Class

Year	Commercial	Residential	Total
2021	4,245	7	4,252
2022	294	2,916	3,210
2023	232	567	799
2024			
Qtr 1	46	75	121
Qtr 2	607	139	746
Qtr 3			
July	10	41	51
August		7	7
Total	5,422	3,750	9,172

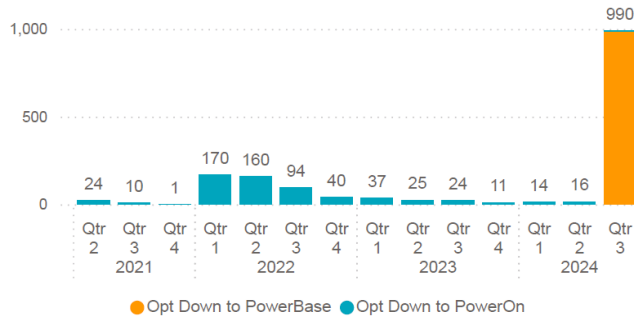
### Opt Ups by Method

Year	CSR	IVR	Web	Total
2021	4,221	4	27	4,252
2022	1,368	85	1,762	3,210
2023	301	84	414	799
2024				
Qtr 1	51	23	47	121
Qtr 2	677	9	60	746
Qtr 3				
July	27		24	51
August	1		6	7
Total	6,634	205	2,338	9,172

## Opt Down History

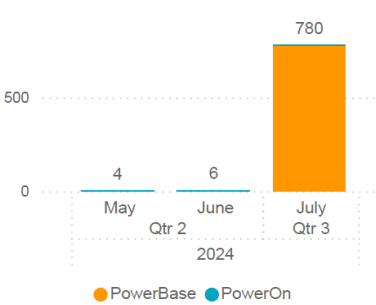
<b>Total Opt Downs</b>	<b>Opt Downs Current</b>
1,611	1,435

### Opt Downs Quarterly



### Opt Downs Monthly

Last 3 Calendar Months



### Opt Downs by Jurisdiction

Year	City of Chula Vista	City of Encinitas	City of Imperial Beach	City of La Mesa	City of National City	City of San Diego	County of San Diego	Total
2021		35						35
2022	2	429	1	4		28		464
2023	4	74				13	6	97
2024								
Qtr 1		12				2		14
Qtr 2		10			1	3	2	16
Qtr 3								
July	78	22	9	22	8	390	251	780
August	12	5	7	6	6	103	71	210
Total	96	582	17	32	15	539	330	1,611

### Opt Downs by Customer Class

Year	Commercial	Residential	Total
2021	34	1	35
2022	23	441	464
2023	9	88	97
2024			
Qtr 1	2	12	14
Qtr 2		16	16
Qtr 3			
July	202	578	780
August	11	199	210
Total	281	1,330	1,611

### Opt Downs by Method

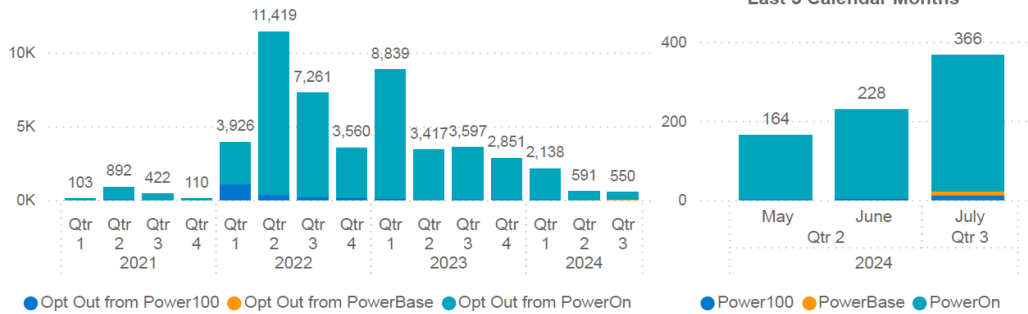
Year	CSR	IVR	Web	Total
2021	31	4		35
2022	311	26	127	464
2023	65	3	29	97
2024				
Qtr 1	10	1	3	14
Qtr 2	10		6	16
Qtr 3				
July	572	75	133	780
August	153	15	42	210
Total	1,151	124	339	1,611

## Opt Out History

**Total Opt Outs**  
49,671

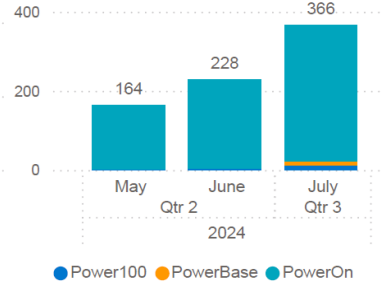
**Opt Outs  
Current**  
44,311

### Opt Outs Quarterly



### Opt Outs Monthly

Last 3 Calendar Months



### Opt Outs by Jurisdiction

Year	City of Chula Vista	City of Encinitas	City of Imperial Beach	City of La Mesa	City of National City	City of San Diego	County of San Diego	Total
2021	266	66	32	84		1,077	2	1,527
2022	3,467	1,876	343	1,269		19,209	1	26,165
2023	747	230	99	235	284	3,185	13,924	18,704
2024								
Qtr 1	120	39	25	39	22	529	1,364	2,138
Qtr 2	55	10	8	21	11	227	259	591
Qtr 3								
July	34	14	3	8	5	157	145	366
August	19	4	7	6	2	71	75	184
Total	4,708	2,239	517	1,661	324	24,452	15,770	49,671

### Opt Outs by Customer Class

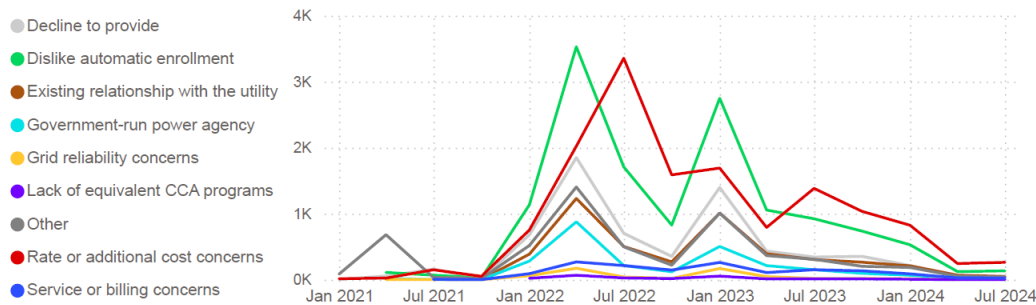
Year	Commercial	Residential	Total
2021	1,489	38	1,527
2022	535	25,630	26,165
2023	1,692	17,012	18,704
2024			
Qtr 1	120	2,018	2,138
Qtr 2	33	558	591
Qtr 3			
July	30	336	366
August	5	179	184
Total	3,904	45,767	49,671

### Opt Outs by Method

Year	CSR	IVR	Web	Total
2021	1,101	102	324	1,527
2022	6,967	4,890	14,308	26,165
2023	4,709	3,794	10,201	18,704
2024				
Qtr 1	591	508	1,039	2,138
Qtr 2	189	150	252	591
Qtr 3				
July	106	89	171	366
August	56	40	88	184
Total	13,718	9,573	26,382	49,671

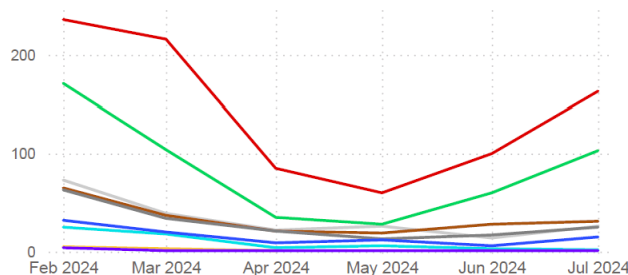
## Opt Out Reason Summary

Opt Outs by Reason Quarterly



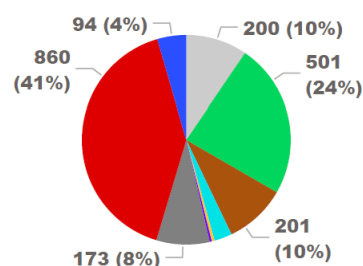
Opt Outs by Reason Monthly

Last 6 Calendar Months



Opt Out Reason Distribution

Last 6 Calendar Months



Opt Outs by Reason Table

Year	Decline to provide	Dislike automatic enrollment	Existing relationship with the utility	Government-run power agency	Grid reliability concerns	Lack of equivalent CCA programs	Other	Rate or additional cost concerns	Service or billing concerns	Total
2021	228	204	2	24	7		818	239	6	1,527
2022	3,584	7,198	2,390	1,492	293	131	2,640	7,718	720	26,165
2023	2,525	5,462	1,972	963	252	90	1,885	4,901	654	18,704
2024										
Qtr 1	214	529	209	67	14	7	185	825	88	2,138
Qtr 2	62	123	68	13	1	1	51	245	27	591
Qtr 3										
July	26	103	31	2		1	25	163	15	366
August	10	30	18	3			13	100	10	184
Total	6,649	13,649	4,690	2,564	567	230	5,617	14,189	1,520	49,671

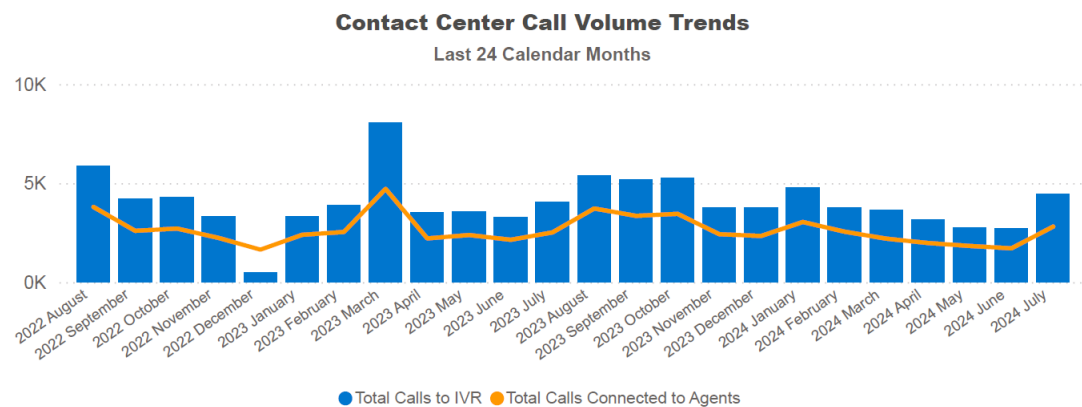
The Phase 4 mass enrollment process in National City and the Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers completed in May 2023. Net Energy Metering (NEM) customers were enrolled from April 2023 through March 2024 based on their true-up date. Mass enrollment for all customer accounts within National City and the Unincorporated County of San Diego concluded on April 1, 2024.



C) Contact Center Metrics

As expected, call volumes rose in July as summer rates came into effect as of June 1, 2024 and customers started seeing increased bills as a function of the Winter to Summer price differential. Our Public Affairs Team has put out Summer season and bill saving tips’ communication and is running social media campaign around Summer energy conservation that should help provide our customers with resources and tips to reduce higher bills.

The chart below summarizes contact made by customers into the Contact Center broken down by month through July 31<sup>st</sup>, 2024:



Contact Center Call Volume Trends						
Year	Total Calls to IVR	Total Calls Connected to Agents	Avg Seconds to Answer	Avg Call Duration (Minutes)	Calls Answered within 60 Seconds (75% SLA)	Abandon Rate
2022	18,142	12,980	12.8	9.6	94.01%	0.00
2023	52,977	34,173	6.8	9.6	97.57%	0.00
2024	25,289	16,118	16.0	9.3	93.22%	0.01
Qtr 1	12,198	7,792	15.7	9.4	92.85%	0.01
Qtr 2	8,646	5,519	9.0	8.7	96.92%	0.00
Qtr 3	4,445	2,807	38.0	10.9	83.27%	0.02
July	4,445	2,807	38.0	10.9	83.27%	0.02
Total	96,408	63,271	10.7	9.5	95.56%	0.00

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



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

#### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

#### **FISCAL IMPACT**

N/A

#### **ATTACHMENTS**

N/A



## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 7**

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To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

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

Date: August 22, 2024

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### **RECOMMENDATION**

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

### **BACKGROUND**

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

### **ANALYSIS AND DISCUSSION**

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

#### *Recent and Upcoming Public Engagement Events*

Moring After Mess: Fiesta Island Clean Up  
Skyline Hills Summer Lunch Program  
San Diego Padres game  
Young Professionals Meetup – Encinitas Chamber of Commerce  
Encinitas Library  
All-Inclusive Day of Play and Resource Fair  
Imperial Beach Library  
College-Rolando Library  
San Diego Pride Parade  
Sweetwater Summit Regional Park Movie in the Park  
San Diego Central Library Summer Lunch Program  
Cota Vera Olympics Viewing Party  
Jackie Robinson YMCA Annual Donor and Sponsorship Appreciation Lunch

Mongomery-Waller Community Park Movie in the Park  
La Mesa Chamber of Commerce Summer Bash Business Expo  
Central Labor Council Laborpalooza Dinner  
San Ysidro Health Service Emerald Ball  
North San Diego Business Chamber Regional Connect  
Fallbrook Community Center Movie in the Park  
Wish-Collier Park Movie in the Park  
San Diego Wave FC Fan Fest  
Bike the Bay  
Ramona Library Food Pantry  
San Diego International Airport Sustainability Fair  
National City Chamber of Commerce Nonprofit Summit  
Lincoln Acres Count Park Movie in the Park  
Clairemont Family Day  
RB Alive  
Imperial Beach Concerts in the Park  
Adams Avenue Street Fair  
Connect Innovation Day 2024

#### *Marketing, Communications and Outreach*

Community Power has been working with local media to provide the public with information about the services it offers. It is also working with partner organizations on press releases regarding long-term power purchase agreements that will provide customers with reliable, affordable power when new projects come online within the next few years.

The Community Engagement division of the Public Affairs Department hosted several “Understanding Your Bill” workshops in San Diego and Imperial Beach. These events are part of a series of online and in-person workshops that are aimed at answering questions and connecting customers with programs and practices that can save them money. Additional workshops are being planned for the remainder of the year that will focus on topics including solar customer billing and the benefits of SDCP service for large commercial and industrial customers.

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts, including the new Solar Battery Savings program, which provides customers with rooftop solar and battery storage incentives. It is also ramping up efforts to promote upcoming programs including one that helps customers repair their roofs to be ready for solar installations, and another that will distribute grants to small businesses that would benefit from more efficient refrigerators. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in these programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

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

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

#### **AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW**

N/A

#### **FISCAL IMPACT**

N/A

#### **ATTACHMENTS**

N/A

## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 8**

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To: San Diego Community Power Board of Directors

From: Kiran Singh, Director of IT and Analytics

Via: Karin Burns, Chief Executive Officer

Subject: Update on IT & Data Analytics

Date: August 22, 2024

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### **RECOMMENDATIONS**

Receive and file an update on IT and Data Analytics.

### **BACKGROUND**

- San Diego Community Power (SDCP) is on a path to deliver 100% clean energy by 2035 or sooner to the customers within its service territory and is committed to this mission. SDCP'S goal of putting customers as the cornerstone of what we do requires efficient and low-cost operations.
- SDCP Data Analytics and IT team continues to focus on digital and data transformation for the organization.

### **ANALYSIS AND DISCUSSION**

The SD Community Power Data Analytics and IT team focused on the delivery of the following priorities in the past month:

- Hired two new team members to develop internal capabilities in support of organization's technology initiatives and roadmap:
  - Dr. Hanlu Huang - Hanlu is our new Data Scientist who will be working on analytics and predictive modeling. Hanlu received a Ph.D. in Coastal Geology from Stony Brook University with an Advanced Graduate Certificate in GIS (Geographic Information Systems). Hanlu spent 5 years working for Deccan International, focusing on GIS mapping to help clients with fire and EMS planning, response times and optimization. Before that, Hanlu worked for the County of Santa Clara as a GIS analyst and helped

with spatial analysis, reporting, and data requests for the county and other levels of public agencies.

- Jose Tapia – Our new Information Technology System Engineer on the Data Analytics and IT Team is a San Diego local. Jose graduated from San Diego State University with a Bachelor of Science and Information Systems. Jose spent 5 years working for Illumina as desktop support team lead.
- Working diligently to transition and in-source IT systems and infrastructure support from BrenTech, a third-party vendor.
- Onboarded 4 additional new SDCP staff members who would be part of different functional teams within the organization.
- Completion of designing of the enterprise data platform Request For Proposals (RFP). The team is currently working with the procurement and legal teams internally in finalizing the RFP which will be issued to the public soon.
- Recalibration of our customer operations statistics and reporting to incorporate the new service options i.e. PowerBase and Power100 Green+
- Installation of new facility access and security system for the organization. The new system is modern and provides enhanced security, access controls via secured badges and authenticated access through smart devices.

## **COMMITTEE REVIEW**

N/A

## **FISCAL IMPACT**

N/A

## **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 9

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To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: August 22, 2024

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### RECOMMENDATION

Receive and file the update on regulatory and legislative affairs.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Regulatory Updates

##### *Integrated Resource Planning*

On July 19, the CPUC issued a [Proposed Decision](#) (PD) that makes an initial need determination pursuant to Assembly Bill (AB) 1373 (Stats. 2023, Ch.367) under which the California Public Utilities Commission (CPUC) may request that the Department of Water Resources (DWR) procure electricity from diverse long lead-time (LLT) resources on behalf of customers of all load-serving entities (LSE).

This initial need determination totals up to 10.6 gigawatts (GW) of nameplate capacity of four categories of emerging technologies intended to spur market transformation and support a diverse portfolio. The need determination quantities represent maximums, meaning once a procurement request is made, DWR will conduct solicitations and evaluate the quality of bids, including costs and ratepayer risk provisions, and may procure between zero and the upper limits.

Eligible Resource	Quantity (Nameplate)
Offshore wind (OSW)	7.6 GW
Enhanced Geothermal systems (EGS)	1 GW
12-hour or more emerging long duration energy storage (LDES) technologies, that are not lithium-ion or pumped storage hydroelectric	1 GW
Emerging multi-day LDES technologies, that are not lithium-ion or pumped storage hydroelectric	1 GW

The PD maintains that resource procurement from DWR should be treated separately from other LSE procurement, including midterm reliability (MTR) procurement orders and the forthcoming reliable and clean power procurement program (RCPPP). Moreover, the PD does not allow LSEs to opt-out nor reduce allocations via self-procurement after the need determination, noting that LSEs will equally share risks and rewards. Costs and benefits of centrally procured resources will be allocated consistent with the past Cost Allocation Mechanism (CAM): allocating to investor-owned utility service area, and then further differentiating by LSE annually on the basis of the 12-month forecast peak demand or LDES and forecast loads for OSW and EGS.

The CPUC's recommends multiple rounds of competitive LLT solicitations, with the proposed initial timing:

- Late 2024 or 2025: DWR preparatory activities, including formation of procurement group
- 2025: DWR development of solicitation plans and materials, in consultation with Commission staff and procurement group
- Late 2026: First solicitation opens for LDES
- 2027: First solicitation opens for OSW and EGS

On August 8, 2024, CalCCA filed [opening comments](#) on the PD, making the following arguments:

- The PD errs by omitting necessary details regarding the relationship between the CPE procurement and the LSE's planning and procurement activities:
  - Must recognize the inherent interactions between central procurement and the RCPMP that cannot be untangled;
  - Neglects to include LSE self-procurement as a step in the process; and
  - Does not make all efforts to support customer affordability through the ability to transact attributes of CPE-allocated resources.
- The PD errs by basing its procurement cap on analysis that does not demonstrate a clear need for the technologies and amounts ordered:
  - The PD errs in its definition of eligible resources;



- The PD bases its procurement caps on unsupported analysis; and
- If the CPUC foregoes CalCCA's recommendation to revisit the need for central procurement in future IRP cycles, it must lower the procurement cap.
- The PD fails to recommend the CPE retain an expert consultant to maximize state and federal funding opportunities.

CalCCA filed reply comments on August 13, 2024. The PD may be heard as early as the August 22 Commission meeting.

### ***San Diego Regional Energy Network***

As mentioned in the "Update on Programs" item of this agenda packet, the CPUC approved the [Decision Addressing Motion for Authorization of San Diego Regional Energy Network](#) on August 1, 2024. It approved the [Proposed Decision as originally written](#) (key details can be found in Item 5 of the July 2024 Community Advisory Committee [agenda packet](#)), with minor clarifications. The final decision was officially issued on August 7, 2024.

#### ***Opening and Reply Comments***

Prior to the CPUC vote, parties had an opportunity to file opening and reply comments on the Proposed Decision. Opening comments were filed by [SD Community Power](#) on behalf of San Diego Regional Energy Network (SDREN), [SDG&E](#), [Bay Area Regional Energy Network \(BayREN\)](#) and [Tri County Regional Energy Network \(3C-REN\)](#). Reply comments were filed by [SD Community Power](#) on behalf of SDREN, [3C-REN](#) and [BayREN](#), [Inland Regional Energy Network \(I-REN\)](#), the [Public Advocates Office \(PAO\)](#), and [Sonoma Clean Power \(SCP\)](#). All comments expressed support for SDREN's authorization, except PAO who did not oppose SDREN authorization in its comments but did seek CPUC clarification regarding the approval of SDREN's 2028-2031 portfolio budget. Additionally, SDG&E reiterated its intent to withdraw from energy efficiency administration in its opening comments on the PD by stating, "In early 2025, SDG&E intends to file an off-cycle Business Plan Application to wind down its regional energy efficiency portfolio by the end of 2027."

#### ***Disconnections***

On August 8<sup>th</sup>, 2024, the CPUC issued the "[Proposed] [Decision Extending Current Proportional Allocation of Payment on Past-Due Bills Between Investor-Owned Utilities and Community Choice Aggregators](#)". This Proposed Decision (PD) follows the [ALJ Ruling on Disconnection Caps and Past-Due Payment Allocation \(Ruling\)](#), as well as parties' opening and reply comments. The Ruling and CalCCA comments (to which SD Community Power contributed) are summarized and linked in [Item 10](#) of the June 27, 2024, Board of Directors agenda packet.

The PD concurs with the arguments posed by CalCCA in their comments and proposes

that Investor-Owned Utilities (IOUs) “continue to allocate all payments made on past-due bills between utilities and Community Choice Aggregators based on their proportionate share of those past-due bills unless and until the Commission orders otherwise.” The proportional allocation method differs from the waterfall payment methodology of allocating past due payments, which SDG&E supported in its Ruling comments, where payment on past-due balances first goes toward the IOU to make them whole and then to the CCA. The PD justifies continuation of proportional allocation indefinitely on the basis that “the waterfall method inappropriately shifts financial risk to the CCAs, and the proportional allocation method contributes to the financial stability of the CCAs. Customers as a whole benefit from more financially stable CCAs.”

### ***Self-Generation Incentive Program (SGIP)***

As described during the presentation of Item 10 of the July 27, 2024, Board of Directors meeting, CSE filed a Motion with the CPUC in October 2023 asking the CPUC to require SDG&E to “fully fund” SGIP. CSE argued that SDG&E did not appropriately carryover funds from previous SGIP funding cycles and asked the CPUC to order them to do so, which would effectively make additional incentive funds available for customers in the current funding cycle. SDG&E disagreed with CSE’s claims, arguing that they appropriately accounted for SGIP funds, and therefore there were no carryover funds to migrate to the current program cycle. While the CPUC deliberated CSE’s Motion, it issued a Ruling directing CSE to wait list applications submitted on or after November 1, 2023.

On July 1, 2024, the CPUC issued a Ruling denying CSE’s Motion and ordered “SDG&E and CSE [to] execute any necessary SGIP contract amendments to use all SGIP funds in SDG&E’s SGIP memorandum account until the ratepayer-funded sunset date for SGIP”. In addition to funds from Assembly Bill 209 and ratepayers, remaining funds include those resulting from cancellations and accrued interest in the memorandum account. Upon the CPUC’s Ruling of CSE’s Motion, CSE resumed processing applications in the order they were received.

### ***SD Community Power and Clean Energy Alliance Protest Advice Letter 4483-E***

In Advice Letter 4483-E, SDG&E requests authorization to automatically enroll both bundled and unbundled customers in Electronic Billing (also known as paperless billing) when a customer has an e-mail address on their account and has used the electronic payment option at least one time. While Community Power supports efforts to reduce paper and promote sustainability, a protest was jointly submitted with Clean Energy Alliance to request that SDG&E be required to set forth a clear and comprehensive marketing, education and outreach plan in order to avoid customer confusion and reduce potential negative impacts. A copy of the protest is attached to this staff report.

## **B) State Legislative Activities Update**

The Legislature returned from their summer recess on August 5. The legislative session concludes on August 31.

### ***Legislative discussions about ratepayer affordability continue***

Ratepayer affordability has been a key theme of the 2024 legislative year. The Senate Energy, Utilities, & Communications Committee and the Assembly Utilities & Energy Committee both held oversight hearings to better understand why electric rates are rising and to hear about potential solutions. At least 24 bills focused on ratepayer affordability were introduced this year and 13 of those are still moving through the legislative process.

In June the chair of the Assembly Utilities & Energy Committee called for a legislative package that would reduce ratepayer bills by \$10 a month. When this memo was drafted, the package had yet to be introduced though it can be introduced three days prior to the end of the legislative session on August 31. In anticipation that the legislation could seek to sunset ratepayer funds that support energy efficiency programs, Community Power signed a letter with other CCAs urging caution since the funding mechanism is critical to state and local clean energy, grid reliability, and equity goals. The joint-CCA letter noted that energy efficiency programs have historically been funded through a state mandated public purpose program charge, which currently accounts for around 1.7% of total revenues collected annually from ratepayers. The joint CCAs expressed an interest in a dialogue with the Legislature to promote ratepayer affordability while also ensuring critical energy efficiency programs continue to have a viable operational pathway that avoids duplication and promotes transparency.

### ***State Energy Leaders Tell Senate Committee that Grid Reliability has Improved***

On August 6, the Senate Energy, Utilities, and Communications Committee heard from the President of the CPUC, the Vice Chair of the CEC, and the CEO of the California Independent System Operator during an oversight hearing on grid reliability. The hearing, titled [Powering Through: An Update on Electricity Reliability as California Transitions to a Zero-Carbon Future](#), was intended to provide members of the committee with an update on efforts to address electricity reliability associated with managing supply and demand, particularly given extreme weather events, and as the state transitions to a zero-carbon energy future.

The three energy leaders reported that the grid is in much better shape from a reliability standpoint in contrast to electric supply related power outages in summer 2020 and the use of an emergency text message alert to 27 million Californians in summer 2022 to help keep the lights on. They do not anticipate electricity supply shortfalls like the ones that occurred in 2020 and 2022. That is due to a few reasons:

1. Improved grid planning and the extension of the operation of the Diablo Canyon Nuclear Power Plant.
2. Procurement orders from the CPUC, which includes 19 gigawatts of resources with net qualifying capacity, meaning those resources will be available in the evening hours when demand is high. Load-serving entities are on track to bring online 10.2 gigawatts of new resources this year, which would be a record, and a major increase from the 7.2 gigawatts added last year.
3. Better preparation for extreme weather events, including the establishment of the state Electric Supply Strategic Reliability Reserve.

### **C) Federal Legislative Activities Update**

The Senate Energy and Natural Resources Committee [approved](#) the Energy Permitting Reform Act of 2024 ([S. 4753](#)) on July 31. The bipartisan legislation was approved 15-4, with California Senator Alex Padilla recording a yes vote. The bill is a product of compromise between the committee chair, Senator Joe Manchin, and the Republican ranking member, Senator John Barrasso. It includes various transmission reforms from the Clean Electricity and Transmission Acceleration (CETA) Act by Representative Mike Levin and the Building Integrated Grids With Inter-Regional Supply (BIG WIRES) Act by Representative Scott Peters. SD Community Power supports CETA and BIG WIRES. The legislation also establishes a renewable energy development goal on federal lands of 50 gigawatts by 2030, among other provisions to help stimulate the build out of renewable and clean energy.

To garner bipartisan support, the Permitting Reform Act also directs five new offshore oil and gas lease sales in the Gulf of Mexico, expedites coal leasing deadlines, makes permitting reforms for oil and gas extraction on nonfederal lands, and halts an administrative pause on liquified natural gas exports.

The legislation has not been set for a vote of the full U.S. Senate. If voted on and approved by the Senate, it would also need to be approved by the House. Congress is out of session for the months of August and October.

### **AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

SDCP & CEA Protest to SDG&E AL 4483-E/3325-G

August 13, 2024

**Via E-Mail (EDTariffUnit@cpuc.ca.gov)**

Energy Division, Tariff Unit  
California Public Utilities Commission  
505 Van Ness Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102

**Subject: Protest of San Diego Community Power and Clean Energy Alliance to San Diego Gas & Electric Company Advice Letter 4483-E/3325-G**

Dear Energy Division Tariff Unit:

San Diego Community Power (“SDCP”)<sup>1</sup> and Clean Energy Alliance (“CEA”)<sup>2</sup> (together, the “Joint CCAs”) hereby protest San Diego Gas & Electric Company (“SDG&E”) Advice Letter 4483-E/3325-G, SDG&E’s *Request to Modify Gas and Electric Rules 9 – Rendering and Payment of Bills* (the “AL”). In the AL, SDG&E requests approval to modify Electric and Gas Rules to authorize SDG&E to automatically enroll both bundled and unbundled customers in Electronic Billing (also known as paperless billing) when a customer has an e-mail address on their account and has used the electronic payment option at least one time. The Joint CCAs support SDG&E’s efforts to reduce paper and promote sustainability, but are concerned that the AL is incomplete and will cause significant customer confusion, potentially leading to an increase in late payments

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<sup>1</sup> SDCP is the community choice aggregator (“CCA”) for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City and San Diego and the unincorporated areas of San Diego County.

<sup>2</sup> CEA is the CCA for the cities of Carlsbad, Del Mar, Solana Beach, Escondido, San Marcos, Oceanside, and Vista.

and disconnections. As discussed below, the AL, in its current form, should be rejected by the Energy Division. At a minimum, SDG&E should:

1. Set forth a clear and comprehensive marketing, education and outreach (“ME&O”) campaign to avoid customer confusion and reduce negative impacts;
2. Work collaboratively with other load serving entities (“LSEs”), including community choice aggregators (“CCAs”), that provide service in SDG&E’s territory to affected customers. Affected LSEs should be provided ongoing notice of when customers are automatically enrolled in paperless billing to allow CCAs to coordinate messaging and ensure smooth implementation;
3. File an amended AL after consulting with interested stakeholders and after addressing any feedback received through that process. At a minimum, SDG&E should consult with the Joint CCAs, The Utility Reform Network (“TURN”), and the Public Advocates Office (“PAO”);
4. Provide additional data on the number of customers impacted; whether those customers have an online account and if so, when they last accessed it; and how many of the impacted customers are served by a non-IOU LSE; and
5. Provide notice of the amended AL to parties in dockets that may be impacted by this request, including but not limited to Applications (“A.”) 22-05-015/6, SDG&E’s current general rate case, Phase 1.

## **BACKGROUND**

On July 24, 2024, SDG&E submitted AL 4483-E/3325-G requesting Commission approval to modify Electric and Gas Rules 9. The proposed modifications would authorize SDG&E to

automatically enroll customers in Electronic Billing (also known as paperless billing) when a customer has an e-mail address on their account and has paid at least one bill electronically.<sup>3</sup>

The AL does not provide any information regarding the number of customers that meet the proposed criteria for auto-enrollment, whether those customers have online accounts, whether those customers have recently accessed those online accounts, or how recently SDG&E obtained these customers' email addresses. Moreover, the AL does not explain how SDG&E plans to notify customers when they are defaulted into electronic billing or to educate them about their ability to opt out.

## **PROTEST**

Pursuant to General Order ("GO") 96-B, Section 7.4.2 (1), (2), (3) and (6), the Joint CCAs protest the AL on the grounds that the AL was not noticed to parties in impacted Commission dockets, the relief requested is not authorized by statute or commission order,<sup>4</sup> that the analysis, calculations and data in the advice letter contain material omissions, and that the relief requested in the advice letter is unjust, unreasonable, and discriminatory.

### **I. SDG&E's AL Fails to Include an ME&O Plan or Any Information Regarding Customer Notification.**

SDG&E's AL proposes to auto-enroll an un-specified number of customers to Electronic Billing but fails to explain how such customers will be notified of the change. Without a clear ME&O campaign and without specific notifications to customers that they are being moved to paperless billing, customers may not know that they have been moved. Customers may rely on a paper bill as a reminder to pay, even if that customer often pays online. If the paper bill stops

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<sup>3</sup> AL 4483-E/3325-G at 2.

<sup>4</sup> The Commission has established Rule 9 governing the provision of electricity and gas services, which includes guidelines on billing, billing presentation, and payment processing for customers. There is currently no Commission decision to modify electric and gas Rule 9.

coming and customers are unaware of why this is happening, they may forget to pay or assume that they have no unpaid balance due. This lack of awareness that a customer has an outstanding bill could lead to increased late payments and disconnections. Approval of SDG&E's AL without modification could negatively impact the Commission's efforts to reduce customer disconnections.

As LSEs that rely on SDG&E to properly bill customers, SDCP and CEA have a keen interest in ensuring that customers pay their bills in a timely manner. Currently SDCP reports that it has arrearages of 120 days or more of approximately \$57 million, and CEA reports its arrearages in excess of 120 days are over \$6 million. Increases to these arrearage amounts are likely if customers are not aware that they have been automatically moved to Electronic Billing. The Commission should require SDG&E to amend its AL to include a clear plan for customer notification and for a broader ME&O campaign to avoid customer confusion and increases to late payments or disconnections.

Further, the Commission should instruct SDG&E to coordinate with relevant LSEs, including the Joint CCAs. For CCA customers that are automatically enrolled in Electronic Billing, SDG&E should be required to notify the relevant LSE that the customer has been moved. This will allow the relevant LSE to coordinate messaging to customers to ensure a smooth rollout.

Finally, prior to submitting an amended AL, SDG&E should meet with interested stakeholders, including but not limited to the Joint CCAs, TURN and PAO. Indeed, when PG&E filed a similar advice letter earlier this year, it met with several interested stakeholders prior to filing to proactively incorporate relevant feedback.<sup>5</sup> By meeting with stakeholders ahead of time, SDG&E is more likely to be able to file an amended advice letter that is unopposed.

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<sup>5</sup> See, PG&E Advice 4878-G/7213-E, filed on March 18, 2024 at 2-3.



## II. SDG&E's AL Fails to Address Equity Concerns.

The AL does not include any information about the number of customers impacted, and the proportion of those customers that may be low-income, hard to reach, or who may not speak English. For SDG&E's proposal to be successful, customers who are auto-enrolled in Electronic Billing will need to have consistent and reliable internet access. However, SDG&E proposes to automatically enroll any customer that has an email address on file and has utilized online bill payment one time in the past. It is not clear from SDG&E's AL, whether it will verify that email addresses provided are still valid and used regularly. It is also not clear from the AL, whether SDG&E will automatically enroll any customer that has *ever* used the online bill payment feature, or only those that have used it recently.<sup>6</sup>

Lower-income customers are less likely to have reliable consistent access to the internet, even if they have an email address on file and have used the online system in the past. These customers may be at a technological disadvantage if they no longer have reliable internet, access, or technology that is up-to-date and functioning properly. Similarly, hard to reach customers – like those who may not speak English as their primary language (or at all) – may have a harder time understanding that their billing methodology has changed or opting out of Electronic Billing. Similarly, customers with disabilities, such as those that may be hearing or visually impaired, or those with movement disorders may also be limited in their ability to affirmatively opt out.

Prior to approving SDG&E's auto-enrollment proposal, the Commission should require SDG&E to proactively address equity issues and ensure that customers who are auto-enrolled in

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<sup>6</sup> At page 2 of its AL, SDG&E states, "Customers will only be defaulted into Electronic Billing if they have paid at least one bill electronically *and* have an e-mail address associated with their account." However, in its Attachment A, SDG&E proposes the following language, "*Customers who provide an e-mail address to SDG&E and make an electronic payment through SDG&E's payment services in the previous month may automatically be enrolled in electronic billing after the next regular billing cycle following SDG&E's receipt of the payment.*"

paperless billing have the means and the ability to continue making on-time payments. This is especially important, given that low-income and hard to reach customers are at a higher risk of late payment, or disconnection.

### **III. SDG&E'AL Fails to Provide Material Information Regarding Customer Impacts.**

When PG&E filed AL 4878–G/7213–E earlier this year, which requested similar relief, it provided significantly more information about customer impacts than SDG&E has provided in its AL. PG&E provided the number of customers impacted, the number of those customers that had online profiles or accounts through pge.com, and the number of those customers that had accessed their account online within the last 12 months.<sup>7</sup> In contrast, SDG&E's AL only reports the number of customers that currently utilize electronic billing.<sup>8</sup> To facilitate a clearer understanding of the magnitude of the impact related to the AL's proposal, the Commission should require SDG&E to file an amended AL that includes the number of customers impacted; whether those customers have an online account and if so, when they last accessed it; and how many of the impacted customers are served by a non-IOU LSE.

### **IV. SDG&E Should Provide Additional Notice of The AL.**

When SDG&E files an amended AL, the Commission should require it to provide notice to parties in any docket that may be impacted by this request. For example, SDG&E's current general rate case, Applications 22-05-15/6, is currently before the Commission. In that proceeding SDG&E seeks approval to establish revenue requirements and base rates effective January 1, 2024, and to further increase their revenue requirements in post-test years, 2025, 2026, and 2027, based on forecasted costs.

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<sup>7</sup> PG&E Advice 4878-G/7213-E, filed on March 18, 2024 at 2.

<sup>8</sup> SDG&E AL 4483-E/3325-G at 2.

It is not clear from SDG&E's AL what the magnitude of the impact will be on SDG&E's forecasted revenue requirements, but presumably moving a significant number of customers to electronic billing will reduce overall billing costs going forward. SDG&E's AL makes no mention of how this proposal will impact ongoing costs, nor does it propose to refund any money to customers due to projected savings. Parties to SDG&E's general rate case, or other dockets that may be affected by this request should be provided notice so that they can timely file a protest or a response as appropriate.

## CONCLUSION

For the reasons set forth above, the Joint CCAs request that the Commission reject Advice Letter 4483-E/3325-G and instruct SDG&E to file an amended Advice Letter to address the omissions identified herein.

Respectfully submitted,

August 13, 2024

*/s/ Jacob Schlesinger*

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Jacob Schlesinger

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E-mail: [jschlesinger@keyesfox.com](mailto:jschlesinger@keyesfox.com)

*On behalf of San Diego Community Power  
and Clean Energy Alliance*

cc: Ganderson@sdge.com

SDGETariffs@sdge.com

Service Lists: R.18-10-007, A.22-05-016, and R.19-09-009



## AN DIEGO COMMUNITY POWER Staff Report – Item 10

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

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### RECOMMENDATION

Recommendation to receive and file update on Power Resources.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house several activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now eleven people strong with a Senior Settlement Analyst who joined the team in July. The Power Services team has three open positions currently, and is excited to continue stable, prudent growth through 2024.

To help manage the risks associated with its growing power portfolio and financial & budget processes, staff issued an RFP for Professional Services for Energy Trading Risk Management (ETRM) in January 2024. The range of ETRM functions may include deal capture, position tracking and management, valuation, reporting, risk analysis, settlements, and budget integration. Staff is bringing the final contracts to the board in August 2024.

## Portfolio Updates

The Vikings Energy Farm project, a 136 MW solar photovoltaic and 150 MW 4-hour storage facility hit full commercial operations in August 2024. This is the third PPA in SDCP's portfolio to achieve commercial operations. The battery storage portion of this project, which was expected to come online in April 2024, achieved COD in August 2024; SDCP and Vikings amended the PPA on May 23, 2024 to accommodate such delay and to make SDCP whole for the cost of replacement product.

## Long-term Renewable Energy RFPs

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

In pursuit of long-term contracts for renewable energy, over the past 18 months, staff released two RFPs for eligible Renewable Energy resources, an RFP for Stand Alone Storage projects, and evaluated other contracting opportunities to meet SDCP's procurement goals. The SDCP Board has approved resulting contracts for over 1,600 MW of renewable generation and over 1,000 MW of storage capacity. Staff remain in negotiations with several other developers for additional resources that are expected to be online between 2025 and 2029. Pursuant to CAISO's revisions to their cluster study process for interconnecting future projects, staff are issuing an RFP for CAISO Cluster 15 projects, which will serve to select renewable and storage projects that SDCP are most interested in getting studied by the CAISO. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

## Local Development

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

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26<sup>th</sup>, proposals for which were due February 24, 2024. Staff have notified shortlisted participants and hope to present the resulting PPAs to the Board in the coming months.

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

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

## Short-Term RPS Procurement

SDCP staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. SDCP will continue to prioritize environmental targets while also ensuring value for our customers.

## Market Update

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

Near-term California power markets continue to soften due to declining power and gas markets throughout the US, a mild California winter, significant Sierra snowpack, and robust spring-time renewable generation, all of which have so far offset the impacts of drought in the Pacific Northwest and resource scarcity throughout WECC.

## **COMMITTEE REVIEW**

N/A

## **FISCAL IMPACT**

N/A

## **ATTACHMENTS**

N/A



## SAN DIEGO COMMUNITY POWER Staff Report – Item 11

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To: San Diego Community Power Board of Directors

From: Veera Tyagi, General Counsel  
Maricela Hernandez, Clerk of the Board

Via: Karin Burns, Chief Executive Officer

Subject: Adoption of Resolution No. 2024-05 updating San Diego Community Power (Community Power) Conflict of Interest Code to account for the addition and modification of positions listed as designated filers

Date: August 22, 2024

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### RECOMMENDATION

1. Adopt resolution 2024-05 updating the San Diego Community Power (Community Power) Conflict of Interest Code to account for the addition and modification of positions listed as designated filers.
2. Authorize staff to execute the appropriate documents and submit the amended Code to the County of San Diego Board of Supervisors as Community Power's code-reviewing body and request approval of the amended Code pursuant to Government Code Section 87303.

### BACKGROUND

The Political Reform Act of 1974 (the Act) requires, among other things, that all state and local government agencies adopt, maintain, and promulgate a conflict of interest code establishing the rules for reporting financial assets by certain agency officers, employees, and consultants. A conflict of interest code must specifically designate all agency positions, except those listed in Government Code Section 87200, that make or participate in making agency decisions which may foreseeably have an effect on any financial interest of that person, and assign specific types of financial assets to be disclosed that may be affected by the exercise of the powers and duties of that position.

To ensure the code reflects the organization's current staffing, the Act requires agencies to review their code on at least a biennial basis to be conducted each even numbered year. This review process determines if new positions have been created, eliminated, titles updated, or whether the duties of positions designated in the code changed sufficiently enough to warrant adjusting their disclosure obligations.



## ANALYSIS AND DISCUSSION

San Diego Community Power first adopted its Conflict of Interest Code (Code) on April 23, 2020, by Resolution 2020-04. The Code, which was later approved on June 2, 2020, by the County of San Diego Board Supervisors as Community Power's code-reviewing body, incorporated, by reference, Section 18730 of the regulations of the Fair Political Practices Commission (FPPC) as the provisions of the Code. This is commonly referred to as the FPPC Standard Code. The Code contained an Appendix designating all Community Power positions that, at the time, were anticipated to make or participate in making decisions of the agency, as well as assigned appropriate disclosure categories to those positions based on the list of available categories, also referenced in the Appendix. On August 25, 2022, the Code was amended to reflect needed changes to account for the addition of designated positions that make or participate in making agency decisions. On November 15, 2022, the Code was approved by the County of San Diego Board of Supervisors as Community Power's code-reviewing body.

On June 26, 2024, Community Power received the 2024 Biennial Notice from the County of San Diego Board of Supervisors' office with instructions to conduct the Biennial Review of the Code. After conducting a review of the current Code, it was determined that revisions to the Appendix of designated positions are needed to account for the addition of positions that make or participate in making agency decisions which may foreseeably have an effect on any financial interest of that person and changes in listed position titles. Some of the positions have been budgeted but not yet filled. The appendix attached to Resolution No. 2024-05 included with this report reflects these changes.

## FISCAL IMPACT

None

## ATTACHMENTS

- A. Resolution No. 2024-05 approving amendments to San Diego Community Power's Conflict of Interest Code
- B. Draft 2024 San Diego Community Power Revised Conflict of Interest Code (redlined)
- C. 2024 San Diego Community Power Revised Conflict of Interest Code (clean)
- D. 2024 Biennial Notice to the County of San Diego Board Supervisors' office

## RESOLUTION NO. 2024-05

### A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ADOPTING A REVISED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

**WHEREAS**, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest that potentially affect all officers, employees, and consultants of the San Diego Community Power ("SDCP") Governing Board (the "Governing Board"), and requires all public agencies to adopt and promulgate a conflict of interest code; and

**WHEREAS**, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in SDCP being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

**WHEREAS**, the Board of Directors has previously adopted a Conflict of Interest Code on April 23, 2020, amended such Code on August 25, 2022, and now desires to amend said Code; and

**WHEREAS**, notice of the time and place of a public meeting, and of consideration by the Board of Directors, of the proposed Conflict of Interest Code was provided to each designated position, and publicly posted for review at the offices of SD Community Power; and

**WHEREAS**, a public meeting was held upon the proposed Conflict of Interest Code at a regular meeting of the Board of Directors on August 22, 2024, at which all present were given an opportunity to be heard on the proposed Conflict of Interest Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of San Diego Community Power that the Board of Directors does hereby adopt the proposed Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Clerk of the Board, and available to the public for inspection and copying during regular business hours;

**BE IT FURTHER RESOLVED** that the said Conflict of Interest Code shall be submitted to the Board of Supervisors of the County of San Diego for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed Conflict of Interest Code as submitted.

**APPROVED AND ADOPTED** this 22<sup>nd</sup> day of August 2024.

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Joe LaCava Chair, Board of Directors  
San Diego Community Power

**ATTEST:**

**APPROVE AS TO FORM:**

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Maricela Hernandez, MMC, CPMC  
Clerk of the Board of Directors  
San Diego Community Power

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Veera Tyagi, General Counsel  
San Diego Community Power

**CONFLICT OF INTEREST CODE**

**OF**

**SAN DIEGO COMMUNITY POWER**

# CONFLICT OF INTEREST CODE OF SAN DIEGO COMMUNITY POWER

(~~Adopted August 25, 2022~~ Amended Adopted August 22\_\_\_\_\_, 2024)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the ~~conflict~~Conflict of ~~interest~~Interest ~~code~~Code of **San Diego Community Power** (Community Power).

All officials and designated positions required to ~~submit~~file a ~~statement~~Statement of ~~economic~~Economic ~~interests~~Interests shall file their statements with the Clerk of the Board ~~Secretary~~ as SDCommunity Power's Filing Officer, unless the official is required to file their statements directly with the Clerk of the Board of Supervisors of the County of San Diego. The Clerk of the Board ~~Secretary~~ shall ~~make and~~ retain a copy of all statements filed ~~by the Board of Directors and Executive Officer, and forward the originals of such statements to~~ with the Clerk of the Board of Supervisors of the County of San Diego. The ~~Executive Officer~~Clerk of the Board shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

# APPENDIX

## CONFLICT OF INTEREST CODE OF

## SAN DIEGO COMMUNITY POWER

(~~Adopted August 25, 2022~~ ~~Amended~~ Adopted August 22\_\_\_\_\_, 2024 )

### PART “A”

#### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3(b), are NOT subject to CP's Community Power Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are Officials who manage public investments<sup>1</sup>. These positions are listed here for informational purposes only.

#### **Board of Directors**

**Chief Executive Officer**~~/Interim Executive Officer~~

~~Chief Financial Officer/Deputy~~ Chief Executive Officer

General Counsel

~~Treasurer/Chief Financial Officer~~

Chief Operating Officer

Chief Commercial Officer

**Investment Consultant**

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<sup>1</sup> Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

# **DESIGNATED POSITIONS**

## **GOVERNED BY THE CONFLICT OF INTEREST CODE**

### **DESIGNATED POSITIONS'** **TITLE OR FUNCTION**

### **DISCLOSURE CATEGORIES** **ASSIGNED**

Account Services Analyst	5
Chief Operating Officer	4
Clerk of the Board	5
Data and Systems Analyst	5
Director/Manager of Procurement/Power Services	4
Director/Manager of Marketing & Communications	5
Director/Manager of External Affairs	5
Director of Data Analytics and Account Services	4
Director of Programs	4
Director of Regulatory & Legislative Affairs	4
Executive Assistant to CEO/Assistant Board Clerk	5
Finance Manager	4
General Counsel	1, 2
Portfolio Manager	4
Power Contracts Manager	5
Power Settlements Manager	5
Programs Manager	5
Senior Portfolio Manager	4

Department	Previous Designated Position	New Designated Position	Disclosure Categories
<b>Clerk of the Board</b>	Executive Assistant to CEO/Assistant Clerk of the Board	Assistant Clerk of the Board	5
	Clerk of the Board	Clerk of the Board	5
<b>Data Analytics and Customer Operations</b>	Account Services Analyst	Account Services Analyst	5
	Account Services Analyst	Account Services Manager	5
	Data and Systems Analyst	Data Analytics Manager	5
		Data/EDI Engineer	5
		Data Engineer	5
		Data Scientist	5
		Director of Data Analytics and IT	1
		IT Manager	5
		IT Systems Engineer	5
		Key Account Services Manager	5
		Rates Analyst	5
	Director of Data Analytics and Account Services	Senior Director of Data Analytics and Customer Operations	1
		Senior Key Account Analyst	5
		Senior Rates and Strategy Manager	5
		Senior Cyber Security and Compliance Analyst	5
	Finance Manager	Director of Finance	1
		Financial Analyst	5
		Procurement Manager	5
		Projects and Programs Finance Manager	5
		Risk Manager	5
		Senior Financial Analyst	5
<b>Human Resources</b>		Director of People	1
		Human Resources Coordinator	5
		Human Resources Manager	5
		Human Resources Assistant	5
<b>Legal</b>		Legal Counsel	1



<b>Operations</b>	Executive Assistant to CEO/Assistant Clerk of the Board	Assistant Clerk of the Board	5
	Clerk of the Board	Clerk of the Board	5
		Executive Assistant	5
		Office Manager/Administrative Assistant	5
		Senior Executive Assistant	5
<b>Power Services</b>		Compliance Analyst	5
		Contract Management Associate	5
		Director of Portfolio Management	5
	Power Contracts Manager	Director of Power Contracts	5
		Origination Manager	5
	Portfolio Manager	Portfolio Manager	5
		Portfolio Analyst	5
		Senior Load Forecast Analyst	5
		Senior Local Development Manager	5
	Senior Portfolio Manager	Senior Manager of Origination	5
		Senior Quantitative Energy Analyst	5
		Senior Settlements Analyst	5
		Senior Settlements Manager	5
	Senior Portfolio Manager	Senior Portfolio Manager	5
<b>Programs</b>	Director of Programs	Director of Programs	1
	Program Manager	Program Manager	5
		Senior Program Associate	5
	Program Manager	Senior Program Manager	
		Programs Operations and Proposal Manager	5
<b>Public Affairs</b>		Community Engagement Associate	5
		Digital Media Coordinator	5
	Director/Manager of External Affairs	Director of Public Affairs	1
		Local Government Affairs Manager	5
		Marketing Manager	5
		Programs Marketing Manager	5
		Public Outreach	5

		Coordinator	
	Director/Manager of Marketing & Communications	Senior Marketing & Communications Manager	5
		Senior Community Engagement Manager	5
		Senior Manager Strategic Partnerships	5
		Strategic Initiatives Manager	5
<b>Regulatory Affairs</b>	Director of Regulatory & Legislative Affairs	Director of Regulatory & Legislative Affairs	1
		Regulatory Manager	5
		Senior Legislative Manager	5
		Senior Policy Manager	5
		Senior Regulatory Manager	5

Consultants and New Positions<sup>2</sup>

## DESIGNATED MEMBERS OF BOARDS, DISCLOSURE CATEGORIES COMMITTEES & COMMISSIONS:

Community Advisory Committee

1, 2

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<sup>2</sup> Individuals serving as a consultant as defined in FPPC Reg. 18700.3(a) or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Chief Executive Officer ~~/Interim Executive Officer~~ may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The Chief Executive Officer ~~/Interim Executive Officer~~'s determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

## **PART -“B”**

### **DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which ~~he or she~~ the designated position is assigned.<sup>3</sup> “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of **Community Power**.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of **SDCP COMMUNITY POWER**, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of **SDCP COMMUNITY POWER**.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by **SDCP COMMUNITY POWER**.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position’s department, unit or division.

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<sup>3</sup> This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

**CONFLICT OF INTEREST CODE**

**OF**

**SAN DIEGO COMMUNITY POWER**

# **CONFLICT OF INTEREST CODE OF SAN DIEGO COMMUNITY POWER**

**(Adopted August 22, 2024)**

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of **San Diego Community Power (Community Power)**.

All officials and designated positions required to file a Statement of Economic Interests shall file their statements with the Clerk of the Board as Community Power's Filing Officer, unless the official is required to file their statements directly with the Clerk of the Board of Supervisors of the County of San Diego. The Clerk of the Board shall retain a copy of all statements filed with the Clerk of the Board of Supervisors of the County of San Diego. The Clerk of the Board shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

# **APPENDIX**

## **CONFLICT OF INTEREST CODE OF**

## **SAN DIEGO COMMUNITY POWER**

(Adopted August 22, 2024)

### **PART “A”**

#### **OFFICIALS WHO MANAGE PUBLIC INVESTMENTS**

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3(b), are NOT subject to Community Power's Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are Officials who manage public investments<sup>1</sup>. These positions are listed here for informational purposes only.

**Board of Directors**

**Chief Executive Officer**

**Chief Financial Officer/Deputy Chief Executive Officer**

**General Counsel**

**Chief Operating Officer**

**Chief Commercial Officer**

**Investment Consultant**

<sup>1</sup> Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

# **DESIGNATED POSITIONS**

## **GOVERNED BY THE CONFLICT OF INTEREST CODE**

### **DESIGNATED POSITIONS'** **TITLE OR FUNCTION**

### **DISCLOSURE CATEGORIES** **ASSIGNED**

<b>Department</b>	<b>Designated Position</b>	<b>Disclosure Categories</b>
<b>Clerk of the Board</b>	Assistant Clerk of the Board	5
	Clerk of the Board	5
<b>Data Analytics and Customer Operations</b>	Account Services Analyst	5
	Account Services Manager	5
	Data Analytics Manager	5
	Data/EDI Engineer	5
	Data Engineer	5
	Data Scientist	5
	Director of Data Analytics and IT	1
	IT Manager	5
	IT Systems Engineer	5
	Key Account Services Manager	5
	Rates Analyst	5
	Senior Director of Data Analytics and Customer Operations	1
	Senior Key Account Analyst	5
	Senior Rates and Strategy Manager	5
	Senior Cyber Security and Compliance Analyst	5
<b>Finance</b>	Director of Finance	1
	Financial Analyst	5
	Procurement Manager	5
	Projects and Programs Finance Manager	5
	Risk Manager	5
	Senior Financial Analyst	5
<b>Human Resources</b>	Director of People	1
	Human Resources Coordinator	5
	Human Resources Manager	5
	Human Resources Assistant	5
<b>Legal</b>	Legal Counsel	1

<b>Operations</b>	Executive Assistant	5
	Office Manager/Administrative Assistant	5
	Senior Executive Assistant	5
<b>Power Services</b>	Compliance Analyst	5
	Contract Management Associate	5
	Director of Portfolio Management	5
	Director of Power Contracts	5
	Origination Manager	5
	Portfolio Manager	5
	Portfolio Analyst	5
	Senior Load Forecast Analyst	5
	Senior Local Development Manager	5
	Senior Manager of Origination	5
	Senior Quantitative Energy Analyst	5
	Senior Settlements Analyst	5
	Senior Settlements Manager	5
	Senior Portfolio Manager	5
<b>Programs</b>	Director of Programs	1
	Program Manager	5
	Senior Program Associate	5
	Senior Program Manager	5
	Programs Operations and Proposal Manager	5
<b>Public Affairs</b>	Community Engagement Associate	5
	Digital Media Coordinator	5
	Director of Public Affairs	1
	Local Government Affairs Manager	5
	Marketing Manager	5
	Programs Marketing Manager	5
	Public Outreach Coordinator	5
	Senior Marketing & Communications Manager	5
	Senior Community Engagement Manager	5
	Senior Manager Strategic Partnerships	5
	Strategic Initiatives Manager	5
<b>Regulatory Affairs</b>	Director of Regulatory & Legislative Affairs	1
	Regulatory Manager	5
	Senior Legislative Manager	5
	Senior Policy Manager	5
	Senior Regulatory Manager	5



## Consultants and New Positions<sup>2</sup>

<b><u>DESIGNATED MEMBERS OF BOARDS, COMMITTEES &amp; COMMISSIONS:</u></b>	<b><u>DISCLOSURE CATEGORIES</u></b>
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Community Advisory Committee	1, 2
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<sup>2</sup> Individuals serving as a consultant as defined in FPPC Reg. 18700.3(a) or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Chief Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

## **PART “B”**

### **DISCLOSURE CATEGORIES**

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which the designated position is assigned. <sup>3</sup> “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of **Community Power**.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of **COMMUNITY POWER**, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of **COMMUNITY POWER**.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by **COMMUNITY POWER**.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position’s department, unit or division.

<sup>3</sup> This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

## 2024 Local Agency Biennial Notice

Name of Agency: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

Email: \_\_\_\_\_ Alternate Email: \_\_\_\_\_

**Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.**

This agency has reviewed its conflict of interest code and has determined that (*check one BOX*):

☐ **An amendment is required. The following amendments are necessary:**

(*Check all that apply.*)

- ☐ Include new positions
- ☐ Revise disclosure categories
- ☐ Revise the titles of existing positions
- ☐ Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions
- ☐ Other (*describe*) \_\_\_\_\_

☐ **The code is currently under review by the code reviewing body.**

☐ **No amendment is required.** (If your code is over five years old, amendments may be necessary.)

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### Verification (to be completed if no amendment is required)

*This agency's code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions are reported. The code includes all other provisions required by Government Code Section 87302.*

\_\_\_\_\_  
*Signature of Designated Officer*

\_\_\_\_\_  
*Date*

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 1, 2024**, via email to:

***Form700@sdcounty.ca.gov***

**PLEASE DO NOT RETURN THIS FORM TO THE FPPC.**



## SAN DIEGO COMMUNITY POWER Staff Report – Item 12

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To: San Diego Community Power Board of Directors

From: Veera Tyagi, General Counsel

Subject: Approve Third Amendment to the Chief Executive Officer Employment Agreement

Date: August 22, 2024

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### RECOMMENDATION

Approve Third Amendment to the Chief Executive Officer Employment Agreement.

### BACKGROUND

On April 18, 2022, San Diego Community Power (“Community Power”) entered into a Chief Executive Officer Employment Agreement (“Agreement”) with Chief Executive Officer (“CEO”) Karin Burns. On October 27, 2022, the parties entered into a First Amendment to the Agreement that extended the term, revised the notice provision as to termination of the Agreement without cause, and extended the relocation expense reimbursement time period. On June 22, 2023, the parties entered into a Second Amendment to the Agreement to provide an annual merit increase.

### ANALYSIS AND DISCUSSION

Pursuant to the terms of the Agreement, the CEO is to be evaluated by the Board of Directors annually. As part of the CEO’s performance evaluation, the Board may consider a merit increase or other adjustments in salary based on performance and market conditions. General Counsel has prepared the attached Third Amendment to the Chief Executive Officer Employment Agreement. Under the proposed amendment, the CEO’s annual salary could be increased by a certain percentage and/or amount from the current salary of Four Hundred and Thirty-Four Thousand Eight Hundred and Seventy (\$434,870) dollars.

The Board will make a final decision on a recommendation in closed session and verbally announce and vote on the amount as part of this agenda item. Any increase in salary would be effective on August 22, 2024, or other such time as approved by the Board.

## **FISCAL IMPACT**

There is no impact to the current budget for Fiscal Year 2024-25 as CEO salary and benefits were anticipated to be incurred during this fiscal year.

## **ATTACHMENTS**

Attachment: Third Amendment to Chief Executive Officer Employment Agreement.



**THIRD AMENDMENT TO  
CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT BETWEEN  
SAN DIEGO COMMUNITY POWER AND KARIN BURNS**

THIS THIRD AMENDMENT (“**Third Amendment**”) is entered into effective as of August 22, 2024 (“**Effective Date**”), by and between the SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and KARIN BURNS (“**Executive**”). SDCP and Executive are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. The Parties entered into a Chief Executive Officer Employment Agreement dated April 18, 2022 (“**Agreement**”).

B. The Parties entered into a First Amendment to the Agreement dated October 27, 2022 (“**First Amendment**”).

C. The Parties entered into a Second Amendment to the Agreement dated June 22, 2023 (“**Second Amendment**”).

D. Pursuant to the Agreement, Executive serves as the Chief Executive Officer to SDCP and is required to perform the functions and duties specified by SDCP’s Board of Directors and as provided by any such other resolutions of the Board, applicable laws, rules, regulations, orders, directives, policies, or procedures in effect or adopted by SDCP.

E. The Parties desire to execute this Third Amendment as of the effective date.

**AGREEMENT**

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

1. Amendment 3 to the Agreement. The Parties hereby agree to amend the Second Amendment as follows:
  - a. Section 1. Section 1 of the Second Amendment is amended to provide Executive with a \_\_\_\_\_ percent merit increase in salary, in the amount of \_\_\_\_\_ and a market adjustment in the amount of \_\_\_\_\_, bringing Executive’s total base salary to \_\_\_\_\_, payable on a pro-rata basis in accordance with SDCP’s payroll practices and less all applicable payroll taxes and withholdings.
2. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.
3. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

4. Full Force. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this Third Amendment to the Chief Executive Officer Employment Agreement between San Diego Community Power and Karin Burns as of the date first set forth above.

**SAN DIEGO COMMUNITY POWER  
CHAIRMAN OF THE BOARD**

Name: Joe LaCava

Title: Chairman of the Board

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**CHIEF EXECUTIVE OFFICER**

Name: Karin Burns

Title: Chief Executive Officer

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
**Veera Tyagi**  
**General Counsel**

ATTEST:

\_\_\_\_\_  
**Maricela Hernandez, Clerk of the Board**



## SAN DIEGO COMMUNITY POWER Staff Report – Item 13

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To: San Diego Community Power Board of Directors

From: Xiomalys Crespo, Senior Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Community Advisory Committee Appointment for the City of San Diego

Date: August 22, 2024

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### RECOMMENDATION

Board consideration and approval of appointment of Luis Montero-Adams, representing the City of San Diego, to the Community Advisory Committee (CAC).

### BACKGROUND

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

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets, and geographic regions.

### ANALYSIS AND DISCUSSION

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



A total of six (6) applications for the City of San Diego were received. An additional candidate from a previous recruitment cycle was also contacted. Staff worked with Chair LaCava and his staff to conduct screening interviews and advance the application process.

If approved by the Board with a simple majority vote, staff will work with the representative to conduct their oath of office and onboarding prior to the next CAC meeting on September 12, 2024. Staff will also update Attachment A: CAC Roster and Seat Assignments, which is publicly available through Community Power's website, to include the new representative.

As of the drafting of this report, seats for the County of San Diego (unincorporated) and the City of Chula Vista have remained vacant. Applications for vacant seats remain open until filled.

### **COMMITTEE REVIEW**

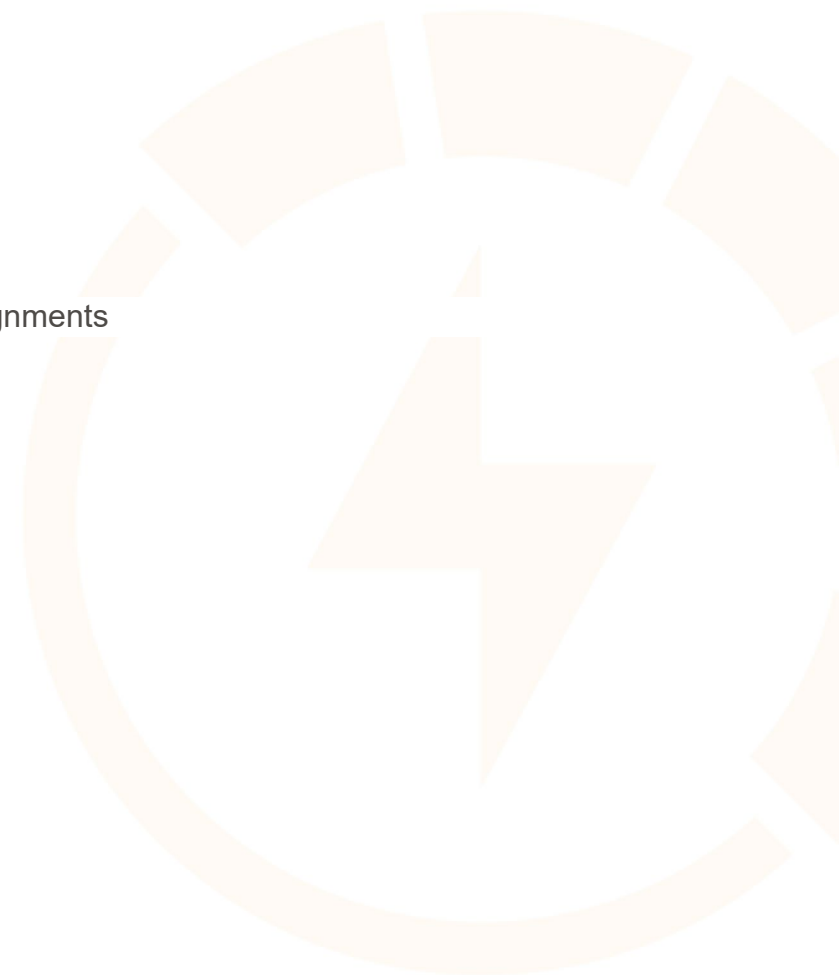
N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

Attachment A: CAC Roster and Seat Assignments





## Community Advisory Committee Roster

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

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

## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 14**

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To: San Diego Community Power Board of Directors

From: Xiomalys Crespo, Senior Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Quarterly Report on Community Advisory Committee

Date: August 22, 2024

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### **RECOMMENDATION**

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

### **BACKGROUND**

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

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

At the direction of the Chair of Community Power's Board of Directors, the CAC, via staff, shall provide quarterly updates during the regular meetings of the Board of Directors. The last quarterly update was provided on April 25, 2024.

### **ANALYSIS AND DISCUSSION**

At the April 25, 2024 regular meeting of the Board of Directors, staff presented a summary of CAC activities from January to March 2024. This report summarizes April through June 2024 (Quarter 4) and was originally slated to be presented at the July 28, 2024 regularly scheduled meeting of the Board, which was canceled.

April: During the April 11, 2024 regular CAC meeting, Chair Vasilakis (City of San Diego) officially announced Anna Webb's (formerly of Imperial Beach) resignation. The CAC heard a presentation on SDCP's Vehicle-Grid Integration Strategy Overview. Members asked questions around permitting costs, battery life, technology reliability during planned blackouts, and impacts to Resource Adequacy requirements. Members also encouraged staff to collaborate with the Committee to identify pilot program participants. The CAC also heard an update from the Power100 Ad-Hoc Committee, in which Members Castañeda (National City), Cazares (La Mesa), Petersen (County of San Diego), Hammond (Encinitas), and Sandoval (Imperial Beach) met to discuss the scope of the committee and to learn about the Power100 premium, current energy sources, and the Power100 Champions program.

May: During the May 9, 2024 regular CAC meeting, Chair Vasilakis welcomed new Board Clerk Maricela Hernandez, who has since directly supported the CAC, and officially announced Eddie Price's (formerly of the City of San Diego) resignation. The CAC heard a presentation on SDCP's Green-e Certified Service, with members commending staff for their responsive effort to meet customer needs. The CAC also heard an update from the Power100 Ad-Hoc Committee, in which members met to learn about the Power100 Champions program and strategize on engaging with key small businesses in the community.

June: During the June 13, 2024, regular CAC meeting, members received an update on SDCP's Strategic Plan, discussing interim goals to get to 100% renewable energy by 2035 and commending SDCP's ability to scale up operations while working towards fiscal stability. The CAC also heard a presentation on SDCP's PowerBase Service. Members also expressed concern about energy of lower renewable content potentially exacerbating environmental justice issues, and staff emphasized that this temporary product's intent is to provide customers with choice and to retain those who may otherwise leave SDCP service. After receiving presentations on the preliminary proposed FY 2024-25 budget and on Regulatory and Legislative Affairs updates, members engaged in a robust discussion on the Solar Battery Savings Program, asking if materials would be offered in multiple languages, clarifying questions around dispatch times and penalties for underperforming batteries, and the timing in which upfront incentives would be disbursed.

As of August 13, 2024, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of San Diego, which is expected to be filled during the August 22, 2024 Board of Directors regular meeting. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies continue to be advertised at meetings, community events, and through Community Power's social media.

Staff will return to the Board of Directors in October 2024 to report on activities for the first quarter of Fiscal Year 2024-2025.

## COMMITTEE REVIEW

N/A

## FISCAL IMPACT

N/A

## ATTACHMENTS

N/A



## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 15**

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To: San Diego Community Power Board of Directors

From: Veera Tyagi, General Counsel

Via: Karin Burns, Chief Executive Officer

Subject: Approve Legal Counsel Agreement with Chapman and Cutler LLP

Date: August 22, 2024

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### **RECOMMENDATION**

Approve legal services agreement, in substantially similar form to Attachment A, with Chapman and Cutler LLP (“Chapman”) for prepayment disclosure legal counsel services for SDCP’s proposed energy prepayment transaction, with a not-to-exceed amount of \$300,000, to be paid from bond proceeds, contingent upon the completion of the transaction.

### **BACKGROUND**

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

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

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

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

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

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

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

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

On November 7, 2023, SDCP issued a request for bids from qualified and experienced firms to provide a full range of municipal advisory services necessary for SDCP to evaluate, structure, and execute prepayment transactions. Shortly thereafter, on December 18, 2023, SDCP entered into an agreement with PFM Financial Advisors LLC (PFM) to provide these services.

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

Then, on April 19, 2024, SDCP issued a requests for proposals (RFPs) for the prepaid transaction for legal services related to bond, tax and/or disclosure counsel and for underwriter services to structure an energy prepayment program. These services are critical to completing a prepayment transaction.

## **ANALYSIS AND DISCUSSION**

Prepay legal counsel is needed to provide advice, counsel, and subject matter expertise to SDCP's selection of transaction counterparties, the negotiation and drafting of all agreements, documentation associated with the transaction, and to serve specifically in the capacity of Disclosure Counsel, Bond Counsel, and Tax Counsel to SDCP.



Following SDCP's RFPs from April 19, 2024, staff recommend engaging with Chapman and Cutler LLC (Chapman) for disclosure counsel services. Proposals for the remaining counsel selections will be addressed in future board actions.

Chapman lawyers have extensive experience in the prepaid energy market dating back to the mid-1990s. Chapman has worked with a variety of prepaid suppliers, underwriters, bond issuers, and municipal purchasers, and Chapman has represented CCAs as prepay counsel. Since 2021, Chapman has represented Marin Clean Energy on two prepayment transactions with Goldman Sachs; Ava Community Energy on three prepayment transactions with Morgan Stanley; Silicon Valley Clean Energy on three prepayment transactions with Morgan Stanley; Pioneer Community Energy on one prepayment transaction with Goldman Sachs; and Clean Power Alliance of Southern California on two prepayment transactions with Goldman Sachs.

The base proposed, fixed fee not-to-exceed amount for Chapman is \$225,000 for representation of SDCP and serving as Disclosure Counsel, contingent upon a successful bond closing and payable from bond proceeds at closing. If required by the underwriter, Chapman will also prepare the "forepart" of the Preliminary Official Statement and will coordinate the printing and distribution to investors. Chapman will undertake this additional work for an additional fixed fee of \$75,000, for a total proposed, fixed fee not-to-exceed amount, contingent upon, and payable at closing through bond proceeds, of \$300,000.

### **Next Steps**

In the coming months, staff will work with an underwriter with the support of PFM, Chapman, and others to prepare documentation supporting a prepay transaction. Staff anticipates that all documentation and transaction parameters, including potential minimum savings thresholds for SDCP, will be presented to the Board later in 2024 at which time staff will seek authorization to execute a prepay transaction according to those parameters and thresholds.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

SDCP is only obligated to pay Chapman contingent upon the completion of the transaction. Should the transaction be completed, the payment will be issued from bond proceeds and will not be paid from SDCP's FY 2024-25 Operating Budget.

### **ATTACHMENTS**

Attachment A: Agreement for Legal Services By and Between San Diego Community Power and Chapman and Cutler LLP



# AGREEMENT FOR LEGAL SERVICES

## BY AND BETWEEN

### SAN DIEGO COMMUNITY POWER AND CHAPMAN AND CUTLER LLP

**THIS AGREEMENT** ("Agreement") is made and entered into on August [ ], 2024 (the "Effective Date") by and between SAN DIEGO COMMUNITY POWER (hereinafter referred to as "SDCP") and CHAPMAN AND CUTLER LLP, a Illinois limited liability partnership (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

#### RECITALS:

**WHEREAS**, SDCP desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to SDCP;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SCOPE OF SERVICES:** Contractor agrees to provide the Services in accordance with the terms and conditions of this Agreement.
2. **FEES:** The fees for furnishing the Services under this Agreement are set forth on **Exhibit B** hereto and by this reference incorporated herein. Said fees shall be payable as set forth on **Exhibit B** and shall remain in effect for the entire term of the Agreement ("Term").
3. **MAXIMUM COST TO SDCP:** In no event will the cost to SDCP for the Services to be provided herein exceed the maximum sum of **\$225,000**.
4. **TERM OF AGREEMENT:** This Agreement shall commence on the Effective Date and shall terminate on **March 1, 2025**, unless extended or earlier terminated pursuant to the terms and conditions set forth in Section 11.
5. **REPRESENTATIONS; WARRANTIES; COVENANTS:**
  - 5.1. **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) it is a limited liability partnership duly organized, validly existing and in good standing under the laws of the State of Illinois, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate 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, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) 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.
  - 5.2. **COMPLIANCE WITH APPLICABLE LAW.** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law").
  - 5.3. **LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services.
  - 5.4. **NONDISCRIMINATORY EMPLOYMENT.** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
  - 5.5. **ASSIGNMENT OF PERSONNEL.** The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to SDCP, as is evidenced in writing.
6. **INSURANCE:** At all times during the Term and the performance of the Services, Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, SDCP may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and SDCP may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. Contractor represents that it presently carries professional liability insurance in a minimum amount of \$50 million per claim and an aggregate amount greater than \$100 million, issued under an annual claims-made policy from Attorneys Liability Assurance Society, Inc. ("ALAS"). In the event the Firm is no longer insured by ALAS during the term of this Contract, Contractor will secure professional liability insurance from a company or companies with a rating not less than that maintained by ALAS. The ALAS policy provides for an extended reporting period of 12 months upon a cancellation by ALAS. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

7. **SUBCONTRACTING:** The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of SDCP.
8. **RETENTION OF RECORDS AND AUDIT PROVISION:** Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). SDCP shall have the right, during regular business hours, to review and audit all Records during the Term and for at least three (3) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at SDCP's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from SDCP. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by SDCP based on undisputed audit findings.
9. **DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:**
- 9.1. **OWNERSHIP AND USE RIGHTS.**
- a) **SDCP Data.** Unless otherwise expressly agreed to in writing by the Parties, SDCP shall retain all of its rights, title and interest in SDCP's Data. "SDCP Data" shall mean all data or information provided by or on behalf of SDCP, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of SDCP to Contractor as SDCP may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. SDCP Data shall also include all data and materials provided by or made available to Contractor by SDCP's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between SDCP and their licensors.
  - b) **Intellectual Property.** Contractor shall at all times retain all rights to use all finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement, except to the extent it includes confidential information of SDCP, for legal services for other clients ("Intellectual Property"). SDCP shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at SDCP's expense, provide such reports, plans, studies, documents and writings to SDCP or any party SDCP may designate, upon written request. Contractor may keep file reference copies of all documents prepared for SDCP.
  - c) **Intellectual Property shall be owned by SDCP upon its creation.** Contractor agrees to execute any such other documents or take other actions as SDCP may reasonably request to perfect SDCP's ownership in the Intellectual Property.
  - d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants SDCP on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of SDCP's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to SDCP prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by SDCP.
- 9.2. **EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 9 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that SDCP shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of SDCP Data, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

10. **FORCE MAJEURE:** A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 9 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

## **11. TERMINATION:**

- 11.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then SDCP may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 11.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party; provided that any resignation by Contractor shall be in accordance with all applicable Rules of Professional Conduct. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 18.
- 11.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 11, in no event shall SDCP be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of SDCP, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by SDCP under this Section 11. Also, as a condition precedent to the payment of any cancellation or termination charges by SDCP under this Section 11, Contractor shall have delivered to SDCP any and all Intellectual Property (as defined in Section 9.1(b)) prepared for SDCP before the effective date of such termination.
- 11.4.** SDCP may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.
- 11.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 11.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by SDCP and shall return all SDCP Data (as defined in Section 9.1(a) above) and Intellectual Property to SDCP.

**12. ASSIGNMENT:** The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of SDCP.

**13. AMENDMENT; NO WAIVER:** This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**14. DISPUTES:** Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and SDCP's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of SDCP and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If SDCP and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), SDCP and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

**15. JURISDICTION AND VENUE:** This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in San Diego, California.

**16. INDEMNIFICATION:** Contractor shall indemnify and hold harmless SDCP from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of any actual or alleged death or injury to any human person, or damage to any tangible real or personal property (e.g., buildings, equipment, furniture and fixtures) as a result of Contractor's negligence; provided, however, that this paragraph 16 shall not be construed to apply to any claims arising out of the professional negligence or malpractice of Contractor as counsel providing the services described herein.

**17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF SDCP:** SDCP is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to SDCP's Joint Powers Agreement, SDCP is a public entity separate from its constituent members. SDCP shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of SDCP's constituent members in connection with this Agreement.

18. **INVOICES; NOTICES:** This Agreement shall be managed and administered on SDCP's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

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Email Address: [TO BE PROVIDED. BY SDCP]

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All other notices shall be given to SDCP at the following location:

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Contract Manager: [TO BE PROVIDED BY SDCP]

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SDCP Address:

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Email Address:

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Telephone No.:

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Notices shall be given to Contractor at the following address:

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Contractor: Doug Bird

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Address: 1270 Avenue of the Americas  
New York, NY 10020

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Email Address: [doug.bird@chapman.com](mailto:doug.bird@chapman.com)

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Telephone No.: (212) 655-2519

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19. **ENTIRE AGREEMENT:** This Agreement along with the attached Exhibits hereto constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of Exhibits, the terms in this Agreement shall govern.
20. **SEVERABILITY:** Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.
21. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor to SDCP hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between SDCP and any Contractor Party. Neither SDCP nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.
22. **THIRD PARTY BENEFICIARIES:** The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.
23. **FURTHER ACTIONS:** The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.
24. **PREPARATION OF AGREEMENT:** This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.
25. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**SAN DIEGO COMMUNITY POWER:**

By: \_\_\_\_\_

Name:

Title:

Date:

**CHAPMAN AND CUTLER LLP:**

By: \_\_\_\_\_

Name: Douglas A. Bird

Title: Partner

Date:

**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor shall provide the following Services under the Agreement:

Contractor will perform legal services on behalf of SDCP relating to a renewable energy prepayment transaction (the "Transaction"), including, as applicable, reviewing and commenting on documents and filings relating to the Transaction, reviewing and commenting on board presentations and approvals, drafting, reviewing and negotiating applicable agreements, certificates and legal opinions, and disclosure counsel services to SDCP in connection with the marketing of the bonds to be issued to finance the Transaction.

## **EXHIBIT B**

### **FEES AND PAYMENT SCHEDULE**

Contractor will perform the Services referred to in Exhibit A for a fixed fee of \$225,000 (the "Fixed Fee"). The Fixed Fee will be payable solely from proceeds of the bonds at closing of the Transaction described in Exhibit A.

The maximum compensation to Contractor under this Agreement is \$225,000.

## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 16**

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To: San Diego Community Power Board of Directors

From: Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Approve contracts for vendors selected in the 2024 Request for Proposals (RFP) for Professional Services for Energy Trading Risk Management

Date: August 22, 2024

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### **RECOMMENDATION**

Approve contracts for vendors selected in the 2024 Request for Proposals (RFP) for Professional Services for Energy Trading Risk Management:

- a. Approve a contract (Attachment A) with PCI Energy Solutions with a not-to-exceed amount of \$4,354,549 over the initial term of five years, and a yearly automatic renewal after the initial term, until SDCP provides a notice of termination, for Energy Trading Risk Management Subscription Software, Update and Support Services, and Hosting Services, and authorize execution by the Chief Executive Officer.
- b. Approve a contract (Attachment B) with cQuant.IO Inc. with a not-to-exceed amount of \$1,467,707 over three years and four months, and options for two one-year extensions, for an Energy Trading Risk Management analytics platform and associated implementation, training, and consulting, and authorize execution by the Chief Executive Officer.

### **BACKGROUND**

As San Diego Community Power (SDCP) continues to grow its portfolio of energy contract and staff its Power Services and Risk team, it is critical that it has direct access to software and tools to manage its portfolio of energy contracts and the risks associated with its positions.

Through a competitive RFP process, SDCP is recommending contracting with PCI Energy Services and cQuant.IO to provide Energy Trading Risk Management software beginning in Q3 2024.



## ANALYSIS AND DISCUSSION

On January 17, 2024, SDCP issued a Request for Proposals (RFP) for Professional Services for Energy Trading Risk Management (ETRM). The scope of service in the RFP were:

- I. Main Scope
  - a. Energy Trading Risk Management System
  - b. Deal capture / trade entry along with deal locking functionality
  - c. Portfolio management, reporting, and risk analysis
  - d. Asset management, tracking, and optimization
  - e. Position tracking, management, and reporting
  - f. Project Valuation and impacts on portfolio
  - g. Risk analysis including counterparty risk management
  - h. Market pricing data and integration with third party data vendors
  - i. Settlements including AP/AR integration
  - j. Pro-Forma Budget integration
- II. Optional Secondary Scope if Proposer has responsive software offerings
  - a. Load forecasting
  - b. Battery optimization and dispatch
  - c. Contract management
  - d. Project valuation at the nodal level

Vendors offering the Main Scope were invited to interview with staff. On March 22, 2024, vendors were shortlisted to advance to a pilot proof-of-concept period for more in-depth evaluation of the proposed software platforms by staff.

After the pilot proof-of-concept period, two vendors were selected by SDCP to move into the contracting phase that provided the most value to SDCP. A summary of the two selected vendors is below.

### Summary of Vendors:

- **PCI Energy Solutions**
  - PCI Energy Solutions offers a comprehensive energy management platform built to enhance the operational efficiency of companies that generate and trade power, resulting in significant savings. Three decades of expertise and unwavering commitment to the success of their customers distinguishes PCI as a trusted partner, with their software supporting companies across 5 continents and nearly 60% of the power generated in the US.

- 32 Years in business supporting a variety of customers globally.
- 300+ employees serving 70% of the Fortune 500 Energy & Utilities companies.
- **cQuant.IO Inc.**
  - cQuant is the premier provider of simulation-based energy analytics. cQuant delivers these sophisticated analytic models for use in a wide variety of energy portfolios including hydroelectric, wind, solar, and storage facilities across all North American ISO's as well as globally; and delivers these models through a powerful web application.
  - cQuant provides best-in-class risk calculations and reporting capabilities across a variety of metrics including MtM and VaR (both parametric and Monte Carlo VaR models), with a powerful system to track portfolio value and risk, allowing our clients to take immediate action as market conditions evolve in unexpected directions. It provides a much-needed view of short-range forward-market-driven risk and combines nicely with other modeling workflows within the cQuant catalog, such as Net Position at Risk, for a fully featured and comprehensive risk and valuation framework.

## **COMMITTEE REVIEW**

The RFP results and staff recommendations for final vendor selections were reviewed with the Energy Contract Working Group on July 8, 2024, and July 17, 2024.

## **FISCAL IMPACT**

SDCP estimates no more than \$5,822,256 in expenditures according to the proposed scope and do not exceed thresholds of the vendor contracts over the initial contract term of each contract (five years and three years and four months respectively). The proposed costs for ETRM vendors are included in the FY 2024-25 operating budget reviewed by the Board on June 27, 2024. SDCP expects these contracts to be cost neutral to the approved operating budget based on the approved ETRM vendor budget and savings in other budget items that will result from bringing these services in-house.

## **ATTACHMENTS**

Attachment A: Subscription Service Agreement for Energy Trading Risk Management Software and Support with PCI Energy Solutions.

Attachment B: Professional Services Agreement for Energy Trading Risk Management Analytics Platform and Associated Implementation, Training, and Consulting with cQuant.IO Inc.

**SUBSCRIPTION SERVICE  
AGREEMENT**

**BETWEEN**

**PCI Energy Solutions**

**AND**

**San Diego Community Power**

## SUBSCRIPTION SERVICE AGREEMENT

This **Subscription Service Agreement** (the “**Agreement**”), is made this \_\_\_\_ day of \_\_\_\_\_, 2024 (“**Effective Date**”) by and between **PCI Energy Solutions**, an Oklahoma corporation with a principal office at 301 David L. Boren Blvd. Suite 2000, Norman, OK 73072 (“**PCI**”) and **San Diego Community Power**, a California joint powers agency with a principal place of business at 815 E Street, Suite 12716, San Diego, CA 92112 (“**Client**” or “**SDCP**”).

**NOW THEREFORE**, in consideration of the promises contained herein, the parties agree as follows:

### 1.0 Definitions

When used herein with initial capitalization, whether in the singular or in the plural, the following terms shall have the following meanings:

“**Client Data**” means data that is submitted by Client to PCI for use with the Subscription Service. For the avoidance of doubt, Client Data does not include Public Data.

“**Initial Term**” is the period specified in the **Exhibit A**.

“**Named User**” are accounts that are individualized and may not be shared or used by anyone other than the one employee or contractor to whom the Named User account is assigned. The identification of Named User must be unique to an individual and may not be of a generic nature or used by a group of individuals.

“**PCI IP**” means the Deliverables, Subscription Service, documentation, all derivative works, and any and all intellectual property provided to Client in connection with the foregoing. For the avoidance of doubt, PCI IP does not include Client Data.

“**Public Data**” means data drawn from publicly available resources.

“**Subscription Service**” means Subscription Software, Update and Support Services, and Hosting Services, each as described herein.

“**Subscription Software**” means the software modules described in the **Exhibit A**.

“**Subscription Fee**” has the meaning set forth in **Exhibit A**.

“**User**” means Client's employees, consultants, contractors, and agents (a) who are authorized by Client to access and use the Subscription Service under the rights granted to Client pursuant to this Agreement; and (b) for whom access to the Subscription Service has been purchased hereunder.

### 2.0 Document Priority

In the event of conflicting provisions between the following documents, the provisions shall govern in the following order: latest Change Order executed by both parties and this Agreement.

### **3.0 Scope of Services**

- 3.1** Provision of Access. Subject to and conditioned on Client's payment of each Subscription Fee and compliance with all other terms and conditions of this Agreement, PCI hereby grants Client a non-exclusive, non-transferable (except in compliance with Section 18.0 (Assignment)) right to access and use the Subscription Service during the Term, solely for use by Named Users in accordance with the terms and conditions herein. Such use is limited to Client's internal use. PCI reserves all rights not expressly granted hereunder. PCI shall provide to Client the necessary log-in instructions and network links or connections to allow Client to access the Subscription Service. The total number of Named Users will not exceed the number set forth in **Exhibit A**, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Subscription Fee payable hereunder.
- 3.2** Documentation License. PCI hereby grants to Client a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 18.0 (Assignment)) license to use the documentation during the Term solely for Client's internal business purposes in connection with its use of the Subscription Service.
- 3.3** Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any intellectual property rights in or relating to, any software, the Subscription Software, or the Subscription Services, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to any software, the Subscription Software, and the Subscription Services are and will remain with PCI. Client may not sell, assign or otherwise transfer the Subscription Software or Subscription Service (or any portion thereof), or sublicense the Subscription Software or Subscription Service (or any portion thereof) to any other entity or grant a security interest in or over Clients' rights to use the Subscription Software or the Subscription Service.
- 3.4** Client may not (and may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, modify, decompile, translate, disassemble, or otherwise attempt to extract the source code of the Subscription Software or any part thereof, unless this is expressly permitted or required by law, or unless Client has been specifically told that it may do so by PCI, in writing.

### **4.0 Ownership**

- 4.1** PCI shall retain title to the Subscription Software and to all the documentation, data and information relating to the Subscription Software given by or disclosed to Client. PCI shall own and possess all rights, title, and interest in the Subscription

Software. PCI expressly has the right to reproduce, publish, sell, license and distribute the Subscription Software to anyone.

- 4.2** Client acknowledges that, as between Client and PCI, PCI owns all right, title, and interest, including all intellectual property rights, in and to the PCI IP. PCI acknowledges that, as between PCI and Client, Client owns all right, title, and interest, including all intellectual property rights, in and to the Client Data. Client acknowledges and agrees that access to the Subscription Service by Client is subscription-based, not sold, and Client acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Subscription Service.

## **5.0 Warranty**

- 5.1** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- 5.2** PCI warrants that the Subscription Software will perform substantially in accordance with and in the manner described in the System Functional Specifications, as shown in **Exhibit D**. This warranty shall be in effect during the Term of this Agreement provided that: (a) the Subscription Software is not modified, changed, or altered by anyone other than PCI, unless authorized by PCI in writing; (b) the error or defect is not caused by Client, its agents, servants, employees, or contractors, or any third parties; (c) Client promptly notifies PCI of the error or defect after it is discovered; and (d) all Subscription Fees due at the time to PCI have been paid. PCI warrants that the Subscription Software is legally owned by, or has been developed by PCI or that PCI is authorized to distribute the Subscription Software. PCI shall, at its own cost, defend, indemnify, and hold harmless Client, its officers, employees, agents, assigns, and successors in interest from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs including attorney's fees and expenses, or any of them arising out of third party claims to ownership (including third party intellectual property claims) of the Subscription Software. This Section 5.2 will not apply to the extent that the alleged infringement arises from: (A) use of the Subscription Service in combination with data, software, hardware, equipment, or technology not provided by PCI or authorized by PCI in writing; (B) modifications to the Subscription Services not made by PCI; or (C) Client Data.

- 5.3 Client represents and warrants that it accepts sole responsibility for: (a) the selection of the Subscription Software and Subscription Service to achieve Client's intended results; (b) its use; and (c) the results obtained from the Subscription Software, Subscription Service, and documentation.
- 5.4 THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBSCRIPTION SOFTWARE OR UPDATE AND SUPPORT SERVICES PROVIDED BY PCI TO CLIENT IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR A CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION. Client's SOLE AND EXCLUSIVE REMEDY and PCI's only obligation under this warranty is to correct all software errors in the most recent release to operate substantially in accordance with the PCI's then-current specification for the Subscription Software. Any action by Client for breach of this Agreement must be commenced within two (2) years after breach has occurred.

## 6.0 Confidentiality

It is anticipated by the parties hereto that either party may acquire confidential and proprietary information of the other party. Such information shall be treated as "Confidential Information" (defined below). The parties shall treat all Confidential Information in accordance with this Section 6.0.

- 6.1 "**Confidential Information**" as used in this Agreement shall mean all such information that is or has been disclosed by the disclosing party or its Representatives, defined below: (i) in writing or by email or other tangible electronic storage medium whether or not marked or otherwise identified as "Confidential" or "Proprietary," or (ii) orally or visually, or by means of any other media, which is disclosed in a manner such that a reasonable person would understand the nature and confidentiality of the information. Confidential Information shall include but not be limited to knowledge of the business, trade secrets, trading practices, financial structure, operations and fiduciary relationships of the other party as well as product design information, pricing structures, source code, object code, copyrights, trademarks, patents, and all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information. As used in this Section 6.0, "**Representatives**" means, with respect to a party, that party's officers, directors, employees, agents, independent contractors, service providers, and/or advisors.
- 6.2 The receiving party agrees, except as required by law: (a) to protect the confidentiality of the other party's Confidential Information as disclosed; (b) to use or access the Confidential Information only as necessary to exercise its rights or perform its obligations in accordance with this Agreement; (c) to use the same degree of care as with its own Confidential Information, which shall be at least a

reasonable standard of care, to prevent disclosure of the Confidential Information to unauthorized third parties; and (d) not to disclose to any third party other than said party's Representatives that are required to use or access the Confidential Information in order to exercise its rights, perform its obligations under the Agreement, or to use the Subscription Software in accordance with this Agreement.

- 6.3** The receiving party agrees to be responsible for any of its Representatives' breach of provisions of this Section 6.0. Each party acknowledges that money damages would not be a sufficient remedy for any breach of this Section 6.0. Accordingly, in the event of any such breach of this Section 6.0, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to equitable relief, including injunctive relief or specific performance, or both.
- 6.4** The provisions of this Section 6.0 shall be inoperative as to particular portions of the Confidential Information disclosed by the disclosing party if such information: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving party or its Representatives; (ii) was available on a non-confidential basis prior to its disclosure to the receiving party; (iii) is or becomes available to the receiving party, its Representatives, or its affiliates on a non-confidential basis from a source other than the disclosing party when such source is not, to the best of the receiving party's knowledge, subject to a confidentiality obligation with the disclosing party, or (iv) was independently developed by the receiving party or its Representatives, without reference to the Confidential Information, and the receiving party can verify the development of such information by written documentation.
- 6.5** Each party shall retain ownership of all Confidential Information it discloses to the other party under this Agreement.
- 6.6** Upon termination of this Agreement, the receiving party will immediately return all Confidential Information disclosed to it, or (ii) will destroy it (with such destruction to be certified in writing by the receiving party) without retaining any copy thereof. Termination of the Agreement or return or destruction of the Confidential Information will not affect the confidentiality obligations of the receiving party or its Representatives, all of which will continue in effect as provided in this Agreement.
- 6.7** If the receiving party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the receiving party shall: (a) promptly, and prior to such disclosure, notify the disclosing party in writing of such requirement so that the disclosing party can seek a protective order or other remedy or waive its rights under Section 6.0; and (b) provide reasonable assistance to the disclosing party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the disclosing party waives compliance or, after providing the notice and assistance required under this Section 6.7, the receiving party remains required by law to disclose any Confidential Information, the receiving party shall




disclose only that portion of the Confidential Information that, on the advice of the receiving party's legal counsel, the receiving party is legally required to disclose and, on the disclosing party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## **7.0 Payment Default**

PCI may terminate this Agreement and Subscription Service in the event Client fails to pay any Subscription Fee due hereunder, which failure to pay is not cured by Client within sixty (60) days from the due date of such fees. In this case, PCI may deactivate the Subscription Service, and PCI shall provide all Client data at the time of termination, through a standard database transfer to Client prior to deactivation. No further use of the Subscription Service (including Subscription Software) by the Client is allowed.

## **8.0 Subscription Fee and Payment Terms**


Subscription Fee and the related payment terms are as specified in **Exhibit A** attached hereto. Payment for correctly prepared invoice is due within thirty (30) days of Client's receipt of the invoice.



## **9.0 Audit Rights**

PCI shall have the right to audit Client's use of Subscription Services to ensure compliance with the Agreement during normal business hours. In the event that an audit reveals use of the Subscription Services to be inconsistent with the terms of this Agreement, PCI may seek additional Subscription Fees.

## **10.0 Consequential Damages**



## **11.0 Notices**

Any legal notices pertaining to this Agreement shall be in writing and delivered or sent via email or registered mail, postage prepaid, to Client (attention Veera Tyagi, General Counsel), or to PCI (attention Chief Financial Officer), at its address stated in this Agreement and effective when received.

For Client: Vtyagi@sdcommunitypower.org

For PCI: sho@pcienergysolutions.com and legal@pcienergysolutions.com

## **12.0 Taxes**

The payments payable under the Agreement shall not be construed to include local, state or federal sales, use, excise, personal property or similar taxes or duties (“**Taxes**”). Any such Taxes, other than taxes based on the net income of PCI, shall be assumed and paid for by Client.

## **13.0 California Law**

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

## **14.0 Severability**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provisions shall be in no way affected or impaired thereby and shall remain in full force and effect.

## **15.0 No Waiver; Force Majeure**

**17.1** No Waiver. Failure of either party to exercise in any respect any of the rights provided for herein shall not be deemed a waiver of any right hereunder.

**17.2** Force Majeure. In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, pandemic, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo (“**Force Majeure Event**”).

## **18.0 Assignment**

This Agreement and the rights and duties hereunder shall not be assignable by either party except upon the written consent of the other party which consent shall not be unreasonably withheld. Any purported assignment, delegation, or transfer in violation of this Section 18.0 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

## **19.0 Update and Support Services**

**19.1** Subject to Section 5.0 (Warranty) and upon payment of the applicable Subscription Fee, Update and Support Service shall include the following:

- a) Telephone service for Client to notify PCI of errors in the Subscription Software and for Client to receive consulting on the proper or recommended methods of utilizing the Subscription Software Monday through Friday 7:00 a.m. to 7:00 p.m. Central time during normal business hours (12x5);
- b) If 24x7 Support is provided, as listed in Exhibit A, telephone service for critical and blocker issues related to the use of the Software on a 24x7 basis.
- c) PCI will use its best efforts to promptly confirm the existence of and correct errors in the most recent release of the Subscription Software if Client notifies PCI of the same;
- d) Periodic updates of Subscription Software modifications applicable to the modules which have been licensed; and
- e) Update and Support Services shall include non-major ISO mandated changes excluding major application rewrites, data restructures, and additional modules.

The level of effort assumed for Update and Support Service is based on the following assumptions:

- f) Problems and resolutions are handled by a single point of contact designated by the Client;
- g) Client shall allow PCI support staff to access Client machines and application servers via Zoom or equivalent method when necessary for Subscription Software problem diagnosis;
- h) Normal support does not cover correcting errors or ISO updates in the former releases if such errors have already been corrected or ISO updates have been incorporated in a later release; and
- i) IT consulting on how to use the PCI API library will be billed on a time and material basis.

While these assumptions are not intended to restrict the use of the Subscription Software, extended use beyond these parameters may warrant additional fees for extended Update and Support Services.

**19.2 Annual renewal of Subscription Service.** Following the Initial Term, this Agreement shall renew automatically for additional one-year periods (each, a “**Renewal Term**”, together with the Initial Term, the “**Term**”) unless the notice of termination is received by PCI on or before sixty (60) days prior to the end of the then-current Term.

## **20.0 Reinstatement**

If Subscription Service is suspended by PCI due to Client non-payment, Client will continue to be charged the applicable Subscription Fee during any period of suspension. In such case, Client may reinstate such Subscription Service at a future date if Client gives PCI written notice of its intent to exercise such right and pays the lapsed annual Subscription Fee(s).

## **21.0 Hosting Services**

**21.1** PCI shall provide Hosting Services for the Subscription Software as defined in this section and its subsections. Hosting Services constitutes a hardware platform remote from Client’s facilities on which the Subscription Software is installed for access by Client’s Users. Hosting Services shall include system administration, database administration, and all aspects of Subscription Software installations and upgrades. As part of the Hosting Services, PCI shall apply all Subscription Software updates and provide the following IT and database administration services:

<b>Included IT and Database Administration Services</b>
a. Operating system, database and WebLogic patches, updates, and upgrades
b. Operating system and database backups
c. System, database and local network monitoring
d. Operating system, database, local network security
e. Operating system, database and local network troubleshooting and error resolution

**21.2** Hosting Services shall be subject to certain storage and compute limitations as described in the attached PCI Hosted Service Storage and Compute Limit Specification which is attached hereto as **Exhibit C** and that may be updated by PCI from time to time.

**21.3** Client will monitor the operation of the Hosting Services and notify PCI if tasks and interfaces are not functioning properly. For those functions under Client’s control, and as directed by PCI, Client will take the recommended remedial actions to correct malfunctions in the tasks and interfaces.

## **22.0 Service Level Failure; Service Credit.**

**22.1** Subject to the terms and conditions of this Agreement, PCI will use commercially reasonable efforts to make the Hosting Services available in production environment at least 99.9% of the time as measured over the course of each calendar month during the Term (each such calendar month, a “**Service Period**”), excluding unavailability as a result of any of the Exceptions described below in this Section 22.1 (“**Availability Standard**”). “**Service Level Failure**” means a material failure of the Hosting Service to meet the Availability Standard. For purposes of calculating the Availability Standard, the following are “**Exceptions**” to the Availability Standard, and neither the Hosting Service will be considered un-available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Standard or impaired ability of Client to access or use the Hosting Service that is due, in whole or in part, to any: (a) act or omission by Client that does not strictly comply with this Agreement; (b) Client Failure as defined below; (c) Client's internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by PCI pursuant to this Agreement; (f) downtime from scheduled maintenance and upgrades; (g) issues caused by Client’s personnel (e.g., incorrect setup of a Named User account or (h) disabling, suspension, or termination of the Hosting Service. PCI is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a “**Client Failure**”).

**22.2** In the event of a Service Level Failure during a Service Period, PCI shall issue a credit to Client in the amount of \$0.14 per minute for the actual minutes of production environment Hosting Services outage not counting the Exceptions in excess of the number of minute of production environment Hosting Services outage allowed under the Availability Standard during a Service Period (each a “**Service Credit**”). Any Service Credit payable to Client under this Agreement will be issued to Client in the calendar month following the Service Period in which the Service Level Failure occurred, but in no event later than six (60) calendar days following Client’s written request for said Service Credit. Notwithstanding anything to the contrary in this Agreement, this Section 22.2 sets forth PCI's sole obligation and liability and Client’s sole and exclusive remedy for any Service Level Failure.

**22.3** PCI will use commercially reasonable efforts to provide Client with seven (7) business days’ prior notice of scheduled downtime for maintenance and/or upgrades. To the extent possible, PCI will schedule downtime during times of ordinarily low use by Client. In the event of unscheduled and unforeseen downtime for any reason, except as otherwise prohibited by law, PCI will promptly notify Client and respond promptly to Client’s reasonable requests for information regarding the downtime.

**23.0 SOC Reporting.** SOC 1 Type II and SOC 2 Type II reports for PCI will be available for Client’s review upon request.

**24.0 Systems Access.** PCI requires, and Client shall make available, access to Client’s Subscription Service for the purpose of supporting and provisioning of such service.

## **25.0 Non-Hire**

Each party recognizes that the other party has incurred and will incur significant expenses in training its own employees and agrees that during the Term of this Agreement and for a period of twelve (12) months after its termination, in whole or in part, it will not directly solicit the services of (i) an employee of the other party or (ii) a former employee of the other party whose employment with the other party ended less than twelve (12) months prior to the date of such hiring (unless such employment ending was at the discretion of such employee's employer or such employee accepted a company severance or benefit package offered by the employee's employer), provided, however, that this provision shall not apply if the employer or former employer of such individual consents in writing to such solicitation. The term "directly solicit" shall not include any employment of personnel through the means of advertisements, job postings, job fairs and the like.

## **26.0 No Obligations**

Except as to the obligations as expressly set forth in this Agreement, neither PCI nor Client shall be deemed to have assumed any obligation to enter any other agreement with the other. Further, this Agreement does not create any agency or partnership relationship between the parties.

## **27.0 Headings; No Third-Party Beneficiaries**

**27.1** The parties agree that the captions and headings contained in this Agreement are for convenience only and shall not be deemed to constitute a part of this Agreement.

**27.2** No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

## **28.0 Entire Agreement**

This Agreement, including all Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement may not be modified except by written instrument duly executed by both parties.

## **29.0 Attachments**

Exhibit A - Subscription Fee and Payment Terms

Exhibit B – PCI Information Security Policy Manual

Exhibit C - PCI Hosted Service Storage and Compute Limit Specification

Exhibit D - System Functional Specifications

Exhibit E – PCI Hosted Solutions Functional Specification

**IN WITNESS WHEREOF**, the PCI and Client have duly executed this Agreement.

**SAN DIEGO COMMUNITY POWER**

**Power Costs, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Sandy B. Ho  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Chief Financial Officer  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## Exhibit A

### Subscription Fee and Payment Terms

#### **Subscription Software:**

##### Software Modules

- PCI GenBase
- PCI GenPortal
- PCI GenManager CAISO (Back Office Only)
- PCI GenTrader (Deterministic)
- PCI Deal Capture
- PCI Risk Management
- PCI Contract Settlements
- PCI Insights - Data Reporting
- PCI P&L Analyzer

#### Optional:

- PCI Battery Trader
- PCI Load Forecaster
- PCI GenTrader (Stochastics)

#### **Initial Term:**

Commencing as of the Effective Date and continuing for a period of 5 years (the “**Initial Term**”).

#### **Subscription Fee:**

Client agrees to purchase Subscription Service from PCI and PCI agrees to provide Subscription Service to Client for the duration of the Term (the “**Committed Term**”). During the Committed Term, Client shall pay, on or before the respective due date, the annual subscription fee specified below for Subscription Service (the “**Subscription Fee**”). Further, During the Committed Term, Client shall pay, on or before the respective due date of an invoice per Section 8.0 for any optional software modules or additional Licensed Users in the Subscription Fee and Module Detail below that remain below the do not exceed limit. Such optional items must be requested in writing from Client’s Chief Executive Officer, Chief Commercial Officer, or Director of Power Services.

Subscription Fee			
Annual Period	Base Amount	Do Not Exceed with Optional Modules	Base Amount Payment Due Date
1. First Year		\$770,000	The Effective Date
2. Second Year		\$783,750	First anniversary date of the Effective Date
3. Third Year		\$798,188	Second anniversary date of the Effective Date
4. Fourth Year		\$813,347	Third anniversary date of the Effective Date
5. Fifth Year		\$829,264	Fourth anniversary date of the Effective Date

**Optional Modules Annual Subscription Fee:**

- PCI Battery Trader:
- PCI Load Forecasting:
- PCI GenTrader Stochastics:
- Additional 10 named-user licenses:

**Notes:**

1. The Client will have **12** Named Users. Client may add additional licensed Named Users during the Initial Term per the Subscription Fee and Module Detail above.
2. The Client will have Standard 12x5 Support Service (5am – 5pm, PT | Monday – Friday)
3. The Client will have the use of two (2) environments: Test and Production with Disaster Recovery. Test environment will be made on an on-demand basis during the Term of the Agreement. The cloud environments are subject to Storage and Compute limits as defined in Exhibit C.
4. Subscription Fees listed above are based on a portfolio of 20 generators that are owned and operated by Client. Additional fees shall be due and payable when the portfolio exceeds 20 generators that are owned and operated by Client.
5. Client agrees not to use the Subscription Software for production purposes unless the Subscription Software has been accepted.

**Implementation Services:**

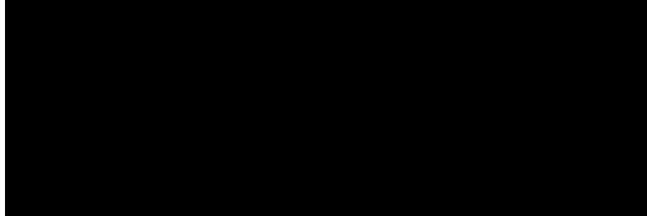
Base system deployment shall be based on Time and Material at a discounted hourly rate of . Base deployment, System Integration, and Client specific requirements related to implementation cost shall not exceed \$360,000.

**Travel Expenses:**

Travel expenses are extra, and the Client shall pay travel expenses for on-site services, including installation and initial training if travel is required and if such travel expenses are approved by Client before they occur. The travel expenses and implementation services combined shall not exceed \$360,000.

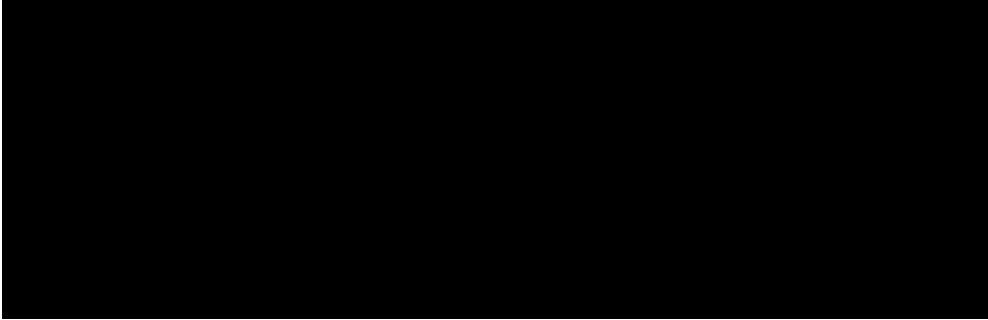
## **Exhibit B**

### **PCI Information Security Policy Manual**



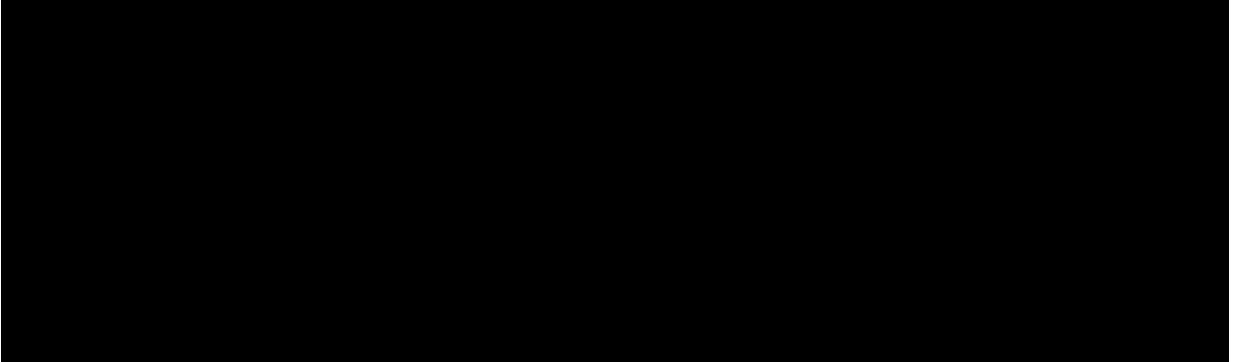
## **Exhibit C**

### **PCI Hosted Service Storage and Compute Limit Specification**



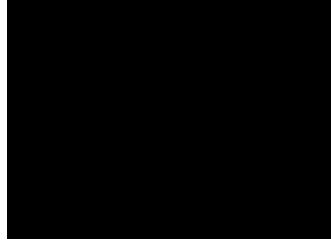
## **Exhibit D**

### **System Functional Specifications**



## **Exhibit E**

### **PCI Hosted Solutions Functional Specification**



## SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered into this twenty third day of August, 2024 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”), and cQuant.IO Inc., a Delaware corporation (“**Vendor**” or “**cQuant**”). SDCP and Vendor are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

### RECITALS

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

B. SDCP desires to engage Vendor to render such professional services for the Energy Trading Risk Management system (“**Project**”) as set forth in this Agreement.

### AGREEMENT

#### 1. **Scope of Services and Term.**

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

1.2 Vendor’s Supplemental Standard Terms and Conditions. Attached hereto as Exhibit D and incorporated by reference are Vendor’s supplemental standard terms and conditions applicable to the Services (“**Supplemental Terms and Conditions**”). In the event of a conflict between the provisions of this the main body of this Agreement and the Supplemental Terms and Conditions, the main body of this Agreement shall control; provided, however, that if the provision relates to software, data, or rights in intellectual property, or termination the provisions of the Supplemental Terms and Conditions shall control.

1.3 Term. The term of this Agreement shall be from the Effective Date to December 31, 2027 (“**Initial Term**”). SDCP reserves the right to amend the Agreement for up to two additional 12-month terms, unless earlier terminated as provided herein. Vendor shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.



## 2. Responsibilities of Vendor.

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

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

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

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



2.5 SDCP's Representative. SDCP hereby designates Karin Burns, CEO, or his or her designee, to act as its representative for the performance of this Agreement ("**SDCP's Representative**"). SDCP's Representative shall have the power to act on behalf of SDCP for all

purposes under this Agreement. Vendor shall not accept direction or orders from any person other than SDCP's Representative, or designee.

2.6 Vendor's Representative. Vendor hereby designates [REDACTED] or his or her designee, to act as its Representative for the performance of this Agreement ("**Vendor's Representative**"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. The Vendor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Vendor may appoint a new Vendor's Representative by giving written notice to SDCP.

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

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

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

## 2.10 Insurance.

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

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

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

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

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

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

(A) General Liability.

[REDACTED]

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

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

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

(B) Workers’ Compensation and Employers Liability Coverage.

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

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

(C) All Coverages.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3. Fees and Payments.**

3.1 Compensation. Vendor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement in accordance with the rates and payment schedule set forth in Exhibit C, attached hereto. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner

set forth in this Agreement. But under no circumstances shall the total compensation during the Initial Term exceed one million four hundred sixty-seven thousand seven hundred and seven dollars (**\$1,467,707**) without written approval of SDCP's CEO or otherwise complying with the SDCP procurement policy. If SDCP exercises its rights to an additional term under Section 1.3, fees for Services for each additional year are subject to increase by [REDACTED] over the previous year. Vendor may submit invoices for annual subscription fees in advance of each annual period of the term and may submit invoices for professional services performed on a monthly basis. All invoices are due and payable on the later of the due date listed in Exhibit C and 45 days after receipt of the invoice. If SDCP disputes any invoiced fees, it must promptly (but in any case within 45 days of receipt of the invoice) give written notice to Vendor along with full payment of all uncontested fees. Upon the resolution of the dispute, SDCP shall pay the remaining fees in accordance with the resolution.

3.2 RESERVED.

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

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

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

5. **General Provisions.**

5.1 RESERVED.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Vendor:** cQuant.IO  
Attn: David Leevan, CEO  
357 South McCaslin Blvd., Suite 200  
Louisville, CO 80027

**SDCP:** San Diego Community Power  
Attn: Executive Director  
815 E Street, Suite 12716  
San Diego, CA 92112

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

5.3 RESERVED.

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

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

5.6 Indemnification; Limitations of Liability; Disclaimers.

5.6.1 To the fullest extent permitted by law, Vendor shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any wrongful acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, vendors, or agents in connection with the performance of the Vendor's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Vendor shall defend, at Vendor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Vendor shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Vendor shall reimburse SDCP and its directors, officials, officers, Vendors, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Vendor, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.



5.6.2 Limitation of Liability and Waiver of Damages.

(A)



(B) VENDOR SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOST PROFITS, ARISING OUT OF RELATING TO THIS AGREEMENT.

(C) Sections 5.6.2(A) and (B) shall not limit Vendor's liability for its indemnification obligation with respect to claims brought or made by third parties against SDCP or other indemnified persons.

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

5.6.4 EXCEPT THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE HEREIN, VENDOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. VENDOR DOES NOT GUARANTEE ANY SPECIFIC BUSINESS OUTCOME FROM THE USE OF SERVICES.

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

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

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

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

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

5.12 Assignment or Transfer. Vendor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP; provided, however, that Vendor may assign this Agreement and all of its rights and obligations hereunder in connection with a merger, change of control transaction, sale of all or substantially all of its assets, or similar transaction. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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

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

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

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

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

5.18 Prohibited Interests. Vendor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting

from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

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

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

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

**SAN DIEGO COMMUNITY POWER**

**cQuant.IO**

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**cQuant.IO**

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
SDCP General Counsel

*\*A corporation requires the signatures of two corporate officers.*

*One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.*

*If the above persons are not the intended signatory, evidence of signature authority shall be provided to SDCP.*

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Services consist of the following:

- a. access to the hosted cQuant Analytics Platform (“**Hosted Analytics Services**”), which enable Customers to access and use a variety of models, including econometric, statistical, mathematical, problem solving, and logistical models (each a “**Model**”), that are hosted by or on behalf of cQuant in a proprietary web application; and
- b. professional services (“**Professional Services**”), which are custom software development services or data-related services that have been negotiated by cQuant and Customer and have been specified in an Order Form.

#### **Main and Secondary Scope of Services.**

cQuant proposes to satisfy elements of the Main Scope and Secondary Scope, as detailed in the RFP solicitation, and incorporated herein by reference, and according to the qualifications listed in the table below. cQuant expects that any requirement for which cQuant has listed a qualification of “Not provided” will be serviced by another provider.

	<b>Requirement</b>	<b>Qualification</b>
Main Scope	Deal capture / trade entry along with deal locking functionality	Not provided
	Portfolio management, reporting, and risk analysis	Provided by cQuant
	Asset management, tracking, and optimization	Asset Management and Tracking not provided, Optimization Provided by cQuant
	Position tracking, management, and reporting	Provided by cQuant
	Project valuation and impact on portfolio	Provided by cQuant
	Risk analysis including counterparty risk management	Provided by cQuant
	Market pricing data and integration with third party data vendors	Provided by cQuant
	Settlements including AP/ AR integration	Not provided
	Pro-forma budget integration	Provided by cQuant
Secondary Scope	Load forecasting	Provided by cQuant
	Battery optimization and dispatch	Provided by cQuant
	Contract management	Not provided
	Project valuation at the nodal level	Provided by cQuant

For all relevant requirements in the table above, cQuant will work closely with SDCP to ensure the solution is properly configured and that SDCP staff are trained on how to use the cQuant platform to satisfy the requirements. In some cases, cQuant may implement the solution on SDCP's behalf, while in others cQuant may guide and assist SDCP in their own implementation of the solution. Generally, cQuant finds it most successful to implement a small but representative subset of the broader portfolio, use this to train the new customer and validate results, and then provide close collaborative support while the customer themselves configures and validates the remainder of the portfolio. This collaborative approach to implementation generally results in greater capability with and confidence in the solution on the part of the customer compared to a more "full-service" approach. It is designed to enable the customer to extract value from the cQuant solution as quickly as possible and to achieve overall project success.

### Consultative Support for RFO Response Analysis

To support the Main Scope and Secondary Scope items listed above during the Term, cQuant also agrees to provide consultative support to SDCP to analyze the responses to their planned upcoming request for offers (RFO) or request for Proposals (RFP). This will be distinct from the professional services required for the implementation of the cQuant solution to satisfy the Main Scope and Secondary Scope requirements noted above. The RFO/RFP Response Analysis support will be billed on an hourly time-and-materials basis, subject to any contracted allocations and "do not exceed" provisions as defined in the contract. cQuant will work collaboratively with SDCP to define the scope for this separate RFO/RFP Response Analysis project at the project commencement to ensure the analytical results delivered will adequately support SDCP's decision of which responses to include in its portfolio, subject to limitations on the available budget for the activities, as set forth in the contract.

It should be noted explicitly that any portfolio-level interactive impacts between projects associated with the RFO/RFP analysis and the totality of SDCP's existing portfolio may be excluded from the RFO/RFP analysis. This is because the RFO/RFP Response Analysis is expected to occur prior to the commencement of the implementation activities for the existing portfolio, and so it may not include insights that depend on the completed configuration and modeling of the existing portfolio.

## A stylized illustration of a ladder. The ladder consists of a blue top rail and black rungs. The rungs are arranged in a way that suggests a perspective view, with some rungs appearing closer and larger than others. The ladder is set against a white background.

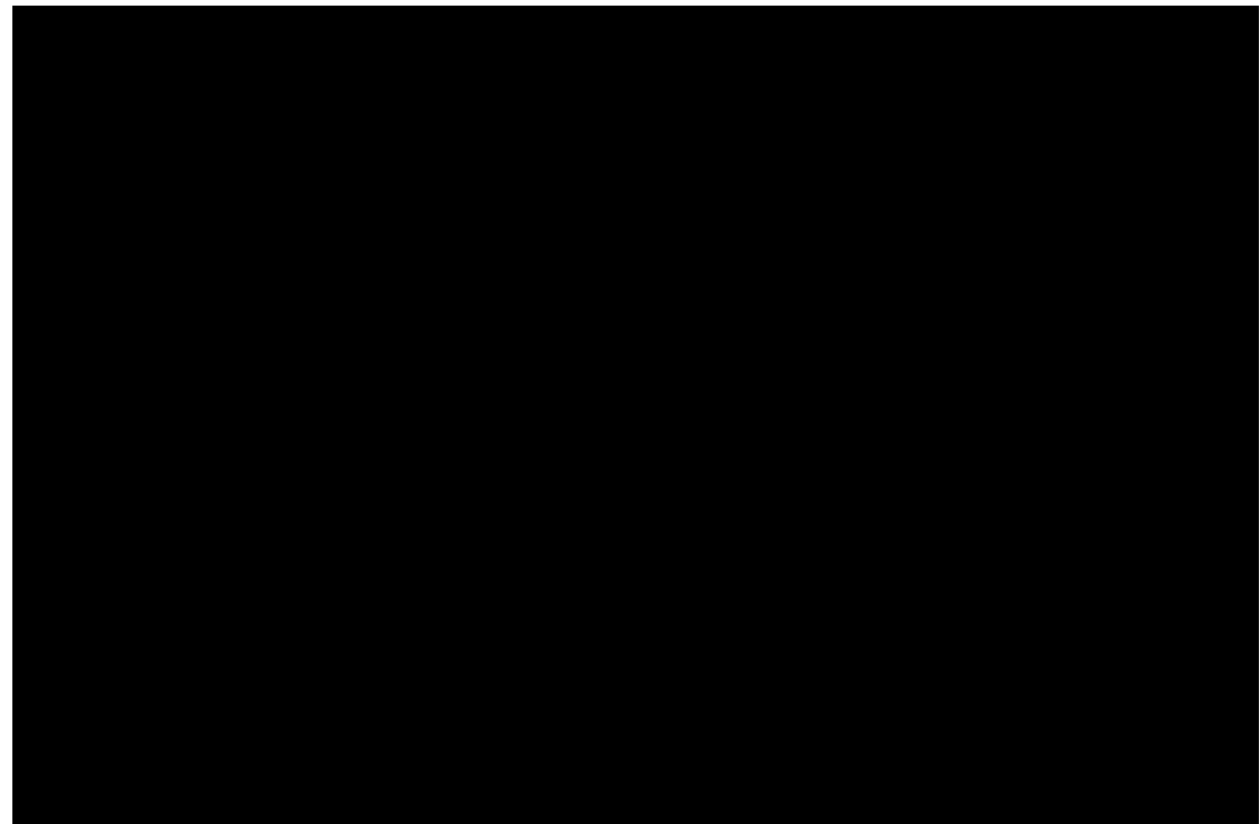
## **EXHIBIT C**

### **CQUANT.IO ORDER FORM**

<b>Customer Information:</b>	
Company Name	San Diego Community Power
Division or Department	Power Services
Billing Address	815 E St Suite 12716, San Diego, CA 92112
License Administrator Name	Kenny Key
License Administrator Email	kkey@sdcommunitypower.org
License Administrator Phone	619-657-0422
Billing Contact Name	SDCP Settlements
Billing Contact Email	<a href="mailto:payments@sdcommunitypower.org">payments@sdcommunitypower.org</a> & <a href="mailto:settlements@sdcommunitypower.org">settlements@sdcommunitypower.org</a>
Billing Contact Phone	(619) 880-6545
<b>License &amp; Services</b>	
Initial License Term	Beginning on the Effective Date and ending 12/31/27
Total Contracted Superusers	5 Superusers
Total Contracted Reporting Users	3 Reporting users



Additional Terms	
Additional Terms and Comments	<p>Unused Professional Service Hours roll over for the term of the contract.</p> <p>The E3 Power Price Forecast is 3<sup>rd</sup> party product and subject to E3's ongoing ability to provide the service through cQuant. If necessary, this line item and associated fee may be cancelled by either party with no effect on the remainder of the agreement.</p> <p>Optional Items must be requested in writing from SDCP's Chief Executive Officer, Chief Commercial Officer, or Director of Power Contracts.</p>



## **EXHIBIT D**

### **SUPPLEMENTAL TERMS AND CONDITIONS**

#### **ARTICLE 1: RESERVED.**

#### **ARTICLE 2: Definitions**

The definitions stated in this Article will apply throughout this Exhibit D. Other definitions are stated elsewhere in this Agreement and Supplemental Terms and Conditions.

**“Content”** means, without limitation, any and all information, data, results, ideas, plans, sketches, texts, files, links, images, photos, video, sound, inventions (whether or not patentable), notes, works of authorship, articles, feedback, or other materials. Models are not included in “Content”.

**“cQuant Technology”** means: (a) Intellectual Property contained in or otherwise related to one or more Models, to any Hosted Analytics Services, or to any other information or materials provided by cQuant to Customer; (b) Intellectual Property and proprietary technology owned by cQuant or its suppliers before the Effective Date; and (c) cQuant Work Product. For clarity, cQuant Technology does not include Customer Data.

**“cQuant Work Product”** means all work product, including Models (but excluding Customer Data incorporated into any Models), and all Intellectual Property embodied therein, that was created or developed by cQuant, alone or in concert with others, in the course of performing Professional Services.

**“Customer Data”** means Content provided for, imported into, or uploaded to the Site by Customer or on Customer’s behalf, in the course of Customer’s proper use of Hosted Analytics Services.

**“Customer Work Product”** means all work product, and the Intellectual Property therein, that was created or developed solely by Customer, including such work product that was created or developed by using Hosted Analytics Services.

**“Documentation”** means all specifications, user manuals, and other technical materials relating to the Services.

**“Effective Date”** is as identified in the Agreement.

**“Intellectual Property”** means (a) copyrights, mask work rights, and moral rights; (b) patents, patent applications, invention disclosures, and industrial property rights; (c) trade secrets and know-how; (d) trademarks, tradenames, service marks, domain names, and URLs; (e) trade dress, industrial design rights, and other design rights; (f) all other items commonly regarded as intellectual property anywhere in the world; (g) all registrations, applications, renewals,

extensions, or reissues of any of the foregoing; and (h) all rights in, to, or under any of the foregoing arising under a license, lease, or other legal instrument.

**“License Term”**, for a Hosted Analytics Services specified in the order form attached as Exhibit C of the Agreement (the **“Order Form”**), if any, means the period during which a specified number of Users are permitted and licensed to use that Hosted Analytics Services. The License Term for any Hosted Analytics Services is stated in the Order Form.

**“person”**, whether or not capitalized, means any natural person and any corporation, limited liability company, government or governmental agency, or other legal entity.

**“Site”** means the cQuant website through which Hosted Analytics Services are provided.

**“third party”** means any person other than cQuant or Customer.

**“User”** is a person authorized in accordance with this Agreement to access, use, and execute Hosted Analytics Services.

### **ARTICLE 3: Hosted Analytics Services**

**3.1 License Grant.** cQuant hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license (the **“License”**), which (a) permits Customer and Users to access, use, and execute the Hosted Analytics Services specified in the Order Form and (b) is subject in all respects to the limitations stated in Section 3.2 and all other provisions of this Supplemental Terms and Conditions.

#### **3.2 Limitations on the License**

- a. All rights not expressly granted to Customer are reserved to cQuant. Except as expressly stated to the contrary in this Agreement, no express or implied license or right of any kind is granted to Customer regarding any Hosted Analytics Services, cQuant Technology, or any part of the foregoing, including the right to obtain possession of any source code, data, or Documentation relating to cQuant Technology. The Parties disclaim the existence or granting of any implied licenses.
- b. The License permits access to and use of the Hosted Analytics Services ordered by Customer (i) only during the License Term, and (ii) only for Customer’s internal business purposes. Any other access or use is prohibited. Without limiting the generality of the foregoing, Customer may use, reproduce, distribute, create derivative works of, perform, display, or execute a Model solely in the course of Customer using the Hosted Analytics Services over the Internet, in the manner in which it was intended to be used, and not otherwise.
- c. Customer will not remove any copyright or other proprietary notice applicable to any Model or Hosted Analytics Services. Nothing in this Agreement restricts Customer’s use, distribution, or creation of derivative works with respect to any Customer Data.

**3.3 Other Prohibited Acts.** Customer shall not: (a) permit or suffer any person to access or use Hosted Analytics Services ordered by Customer, other than the specific Users for whom Customer has paid a fee and has received unique login credentials; (b) rent, lease, loan, or sell access to Hosted Analytics Services to any third party; (c) interfere with, disrupt, alter, translate, or modify any Hosted Analytics Services or any part thereof; (d) reverse engineer or access any Hosted Analytics Services in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of any Hosted Analytics Services; or (iii) copy any of the ideas, features, functions, or graphics embodied in any Hosted Analytics Services; (e) without cQuant's express written permission, introduce software or automated agents or scripts to any Hosted Analytics Services so as (A) to produce multiple accounts, generate automated searches, requests, and queries, or (B) to strip or mine data from any Hosted Analytics Services; (f) perform or publish any performance or benchmark tests or analyses relating to any Hosted Analytics Services or the use thereof; or (g) cover or obscure any page or part of any Hosted Analytics Services via HTML/CSS, scripting, or any other means, if any. Nothing in this section prohibits SDCP from independently developing analytics software or models (including econometric, statistical, mathematical, problem solving, and logistical models) for SDCP internal non-commercial use only.

**3.4 Usernames and Passwords.** cQuant shall furnish to each User (or shall allow each User to specify) a unique username and password to enable such User to access any Hosted Analytics Services specified in the Order Form. Customer will ensure that each username and password will be used only by the specific, named User to whom it was issued, *i.e.*, this is not a software license of the type commonly referred to as a "concurrent use license". Customer is responsible for maintaining the confidentiality of all Users' usernames and passwords, and is solely responsible for all activities that occur under those usernames. Customer agrees (a) not to allow a third party to use Customer's account, usernames or passwords at any time; and (b) to notify cQuant promptly of any actual or suspected (i) unauthorized use of Customer's account, usernames or passwords, or (ii) other breach or suspected breach of this Agreement. cQuant reserves the right to terminate any username and password, which cQuant reasonably determines may have been used by an unauthorized third party. A User license may not be shared or used by more than one User. Customer, upon notification to cQuant, may reassign a particular User's rights with regard to the Hosted Analytics Services specified in the Order Form, if that User no longer requires access to the Hosted Analytics Services specified in the Order Form, e.g., because he or she has been reassigned to a different position within Customer's organization or because his or her employment with Customer has terminated; such reassignment must include all the rights of the User in question.

**3.5 Not a Sale.** This is not an agreement of purchase or sale; computer software and other cQuant Technology involved in the provision of Hosted Analytics Services is not offered for sale to cQuant customers in the ordinary course of cQuant's business.

## **ARTICLE 4. Intellectual Property**

**4.1 cQuant Technology.** cQuant Technology, which term includes cQuant Work Product, is the exclusive property of cQuant or its suppliers. Customer shall assign and hereby does assign,

convey, and quitclaim unto cQuant all Customer's right, title, and interest in, to, and under cQuant Technology. Customer hereby assigns to cQuant any suggestions, ideas, enhancement requests, feedback, and recommendations, and all other Content provided by Customer, related to any Models, Hosted Analytics Services, or other cQuant Technology, except for Customer Data.

**4.2 Customer Work Product.** Customer Work Product is the sole and exclusive property of Customer.

**4.3 Commingling of Work Product.** The incorporation of any Customer Work Product into cQuant Work Product will not affect the ownership of such Customer Work Product or the cQuant Work Product.

**4.4 Assistance in Perfecting Rights.** Customer will perform all acts that are reasonably necessary or desirable to permit and assist cQuant in obtaining, perfecting, and enforcing cQuant's rights and benefits in, to, and under Intellectual Property embodied in cQuant Technology. If cQuant is unable for any reason to secure the signature of Customer or any of Customer's employees or contractors on any document necessary or desirable in connection with the filing, prosecution, registration, or memorialization of cQuant's rights in any cQuant Technology, Customer hereby irrevocably designates and appoints cQuant and cQuant's duly authorized officers and agents as Customer's agents and attorneys-in-fact to do so in the name, place, and stead of Customer, all with the same legal force and effect as if the document or instrument in question were executed by Customer. The foregoing is deemed a power coupled with an interest and is irrevocable.

#### **4.5 Infringement, Indemnification.**

- a. cQuant shall defend, indemnify and hold Customer, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, against any claim brought by a third party alleging infringement of any Intellectual Property right of any person or entity in consequence of the use of cQuant Technology by Customer in accordance with this Agreement, including any method, process, product, or concept specified or depicted (an "**Infringement Claim**").
- b. If any portion of the cQuant Technology becomes, or in cQuant's opinion is likely to become, the subject of an Infringement Claim, cQuant may, at cQuant's option (and in addition to providing indemnification), do any or all the following:
  - i. procure for Customer the right to continue using the allegedly infringing cQuant Technology;
  - ii. replace the allegedly infringing cQuant Technology with non-infringing services that do not materially impair the functionality of the cQuant Technology;
  - iii. modify the allegedly infringing Services so that they become non-infringing; or

- iv. terminate the allegedly infringing cQuant Technology, and refund to Customer any fees actually prepaid by Customer with respect to the unexpired portion of the term. If cQuant chooses the option stated in clause “(iv)”, then upon such termination, Customer will immediately cease all use of the allegedly infringing cQuant Technology.
- c. cQuant shall have no obligation with respect to any Infringement Claim to the extent it is based upon or results from: (i) any use of the cQuant Technology that is not in accordance with this Agreement or the Documentation; (ii) any use of the cQuant Technology in combination with other products, equipment, software, or Content not supplied by cQuant; (iii) cQuant’s conformance to Customer’s specifications; or (iv) any modification of the cQuant Technology by a person other than cQuant or its authorized agents.
- d. This Section 4.5 states the sole and exclusive remedies of Customer for breach of the Noninfringement Warranty.

## **ARTICLE 5. Professional Services**

**5.1 Fees and Expense Reimbursement.** cQuant’s fees and other charges for Professional Services will be as stated in the applicable Order Form, which will only be Exhibit C of this Agreement unless additional Order Forms are necessary per Exhibit C. Unless otherwise stated in an Order Form, Customer will reimburse cQuant for all reasonable out-of-pocket expenses actually incurred by cQuant in performing Professional Services. cQuant will seek Customer approval before incurring reimbursable expenses. cQuant is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing Professional Services.

**5.2 Work Orders.** Each Order Form for Professional Services will contain, as an attachment, a full description of the Professional Services to be rendered by cQuant thereunder, which attachment is referred to in this Agreement as a “Work Order”. Each Work Order will be deemed an integral part of the Order Form to which it is attached. Work Orders will include all material information regarding the Professional Services project, including, but not limited to: a reasonably detailed description of the Professional Services to be rendered; the price or compensation to be paid by Customer for the Professional Services, itemized in reasonable detail; any applicable deadlines, milestones, or special requirements; and any other material terms negotiated by the Parties.

## **ARTICLE 6. Customer Data**

**6.1 Customer’s Data Warranty.** Customer represents and warrants that the use of Customer Data by Customer or cQuant will not violate the Intellectual Property, contractual, or other rights of any third party and will not contain any virus, worm or other malicious computer

programming code capable of damaging any Hosted Analytics Services or the systems that provide the same (“**Customer’s Data Warranty**”).

**6.2 Systems Use and Security.** cQuant shall provide reasonable logical and physical security for Customer Data, which will include, but will not be limited to: (a) a defined security administration practice and process including account and password administration; and (b) ensuring that only cQuant employees and contractors who need to access Customer Data for cQuant to provide Hosted Analytics Services will have such access. cQuant may modify its security systems and procedures from time to time, in its discretion. Notwithstanding the foregoing provisions of this paragraph, cQuant may delegate any or all its obligations under this Section 6.2 to a reputable professional hosting provider, and cQuant will be deemed released from performing any of the obligations so delegated.

**6.3 Data Loss.** cQuant endeavors to employ best industry practices, including backing up Customer Data, to avoid loss, corruption, or destruction of Customer Data (“**Data Loss**”). Customer shall archive, keep, and maintain a current copy of all Customer Data, at Customer’s sole cost and expense. If a Data Loss occurs because of cQuant’s negligence or greater fault, cQuant will engage a professional data recovery expert or firm, at cQuant’s expense, in an effort to recover the Customer Data; *provided, however*, that cQuant will not be required to expend more than \$10,000 in such recovery efforts for any single Data Loss or series of related Data Losses. If a Data Loss occurs as the result of any cause other than cQuant’s negligence or greater fault, and Customer requests cQuant to perform recovery services with respect to that Data Loss: (a) Customer shall pay cQuant for such recovery services at cQuant’s then-current time and materials rates, regardless of whether cQuant’s recovery services are successful; and (b) cQuant’s recovery services will be without warranty of any kind. Except as expressly stated above in this paragraph, cQuant will incur no liability or obligation as a result of any Data Loss, regardless of whether the Data Loss results from the negligence or greater fault of cQuant.

#### **6.4 Access to Customer Data On Termination**

- a. Except as provided in subsection “(b)”, if Customer’s access to or subscription for Hosted Analytics Services is terminated, and if Customer requests an electronic copy of its Customer Data in writing within 30 days after such termination, cQuant shall comply with the request. cQuant may delete permanently all Customer Data at any time more than 30 days after Customer’s access to or subscription for Hosted Analytics Services is terminated, regardless of the circumstances of termination.
- b. cQuant may suspend Customer’s access to Customer Data throughout any period during which Customer is delinquent in paying any amount owing to cQuant for Hosted Analytics Services. If Customer remains delinquent for 10 days or more after receiving written notice of the delinquency from cQuant, cQuant in its discretion may delete all Customer Data and will not be required to retain or provide a copy of the Customer Data so deleted.

**6.5 cQuant’s Collection and Use of Customer Data and Usage Data.** cQuant will not disclose Customer Data to any third party except in anonymized and aggregated form and will not



knowingly and intentionally use Customer Data for any purpose other than rendering Services to Customer. cQuant collects data regarding the usage of Hosted Analytics Services; the usage data so collected may include, without limitation, data set sizes, Model run-times, and frequency of Model runs. Customer hereby grants cQuant permission to disclose such usage data to third parties in anonymized and aggregated form.

**6.6 Customer Logos.** cQuant must seek Customer approval prior to displaying Customer's logos. Any display of Customer's logo by cQuant must make no representation, expressly or impliedly, that Customer endorses cQuant or its products or services.

## **ARTICLE 7. Taxes**

- a. cQuant's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for the payment of all such taxes, levies, or duties, excluding only United States taxes based solely on cQuant's income.
- b. No part of cQuant's compensation will be subject to withholding by Customer for the payment of any taxes, including, without limitation, social security, federal, state, local, and payroll. Customer will regularly report all payments made to cQuant to the appropriate federal, state, and local agencies, if and as required by law.
- c. cQuant is solely responsible for filing all tax returns and making all tax payments required in connection with the performance of Services.

## **ARTICLE 8. cQuant's Warranties and Disclaimers**

**8.1 cQuant's Limited Warranties, including Uptime Warranty.** Subject to the disclaimers, limitations, and restrictions stated in this Agreement, cQuant provides the following limited warranties: (a) that cQuant will provide Hosted Analytics Services in a manner consistent with general industry standards applicable to technical subscription services similar to the Hosted Analytics Services; and that the Hosted Analytics Services will materially conform to cQuant's then-current Documentation when used under normal circumstances and in accordance with cQuant's recommendations; (b) cQuant will perform Professional Services in a good and workmanlike manner; and (c) that Customer's use of any cQuant Work Product or Hosted Analytics Services in a manner expressly authorized by cQuant in this Agreement will not infringe the Intellectual Property rights of any third party (the limited warranty stated in subsection "(c)" being the "**Noninfringement Warranty**"). In addition to the warranties stated above in this paragraph, with respect to Hosted Analytics Services, cQuant provides the Uptime Warranty, as defined in cQuant's standard Service Level Agreement, Appendix A.

**8.2 Disclaimers.** The limited warranties stated in Section 8.1 (collectively, "**cQuant's Limited Warranties**") are the sole and exclusive warranties made with respect to any Services and are made to Customer only; no other person may assert a claim for the breach of any of cQuant's Limited Warranties. **EXCEPT FOR CQUANT'S LIMITED WARRANTIES, THE SERVICES ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY WHATSOEVER. CQUANT DISCLAIMS ALL OTHER WARRANTIES, WHETHER**



**WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: CQUANT DOES NOT WARRANT THAT ANY SERVICE, INCLUDING ANY MODELS, WILL BE ERROR-FREE; AND EXCEPT AS EXPRESSLY STATED IN THE UPTIME WARRANTY, CQUANT DOES NOT WARRANT THAT ANY HOSTED ANALYTICS SERVICES WILL BE CONTINUOUS OR UNINTERRUPTED. ALL SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CQUANT IS NOT RESPONSIBLE FOR, AND CQUANT'S LIMITED WARRANTIES DO NOT COVER, ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.**

## **ARTICLES 9-10. RESERVED**

### **ARTICLE 11. Confidentiality**

**11.1 Definition of Customer Confidential Information.** “**Customer Confidential Information**” means (a) all technical and non-technical information related to the Customer’s business or its current, future, and proposed products or services, including trade secrets, financial results, and plans, marketing plans, and customer and vendor data; and (b) any information that Customer has received from others and is obligated by contract or otherwise by law to treat as confidential or proprietary. Notwithstanding the foregoing, “Customer Confidential Information” does not include any information that: (i) is or becomes known to members of the public, through no fault of cQuant; (ii) is provided to cQuant by a third party who, to cQuant’s actual knowledge, did not commit a breach of duty or other wrongful act in doing so; (iii) is independently developed by cQuant or is previously known to cQuant; (iv) is required to be disclosed by court order or legal process, but only if cQuant makes commercially reasonable efforts to inform Customer of such order or process in advance of disclosure.

**11.2 Nondisclosure and Nonuse of Customer Confidential Information.** cQuant shall not use, disseminate, or disclose Customer Confidential Information to any third party without the consent of Customer. cQuant shall use Customer Confidential Information solely to perform Work and otherwise to perform its obligations under this Agreement. cQuant shall treat all Customer Confidential Information with the same degree of care as cQuant accords cQuant’s own confidential information, but in no case shall cQuant use less than reasonable care. cQuant shall disclose Customer Confidential Information only to those of cQuant’s employees and contractors who have a need to know such information in performing their employment or contracting responsibilities. Each such employee or contractor will have agreed to be bound by terms and conditions that at least as protective of Customer Confidential Information as the terms and conditions applicable to cQuant under this Article. cQuant shall return all Customer Confidential Information to Customer on demand at such time as it is no longer needed to perform Work; *provided, however*, that cQuant may retain a copy solely for archival purposes, for use or production pursuant to court order or legal process.

**11.3 Confidentiality of cQuant Work Product.** All cQuant Work Product is proprietary and confidential to cQuant. Except as expressly stated in the applicable Work Order, or as otherwise required by law. Customer shall not disclose cQuant Work Product to any third party or use it for any purpose other than the approved purposes stated in the applicable Work Order.

**11.4 Prohibition against Reverse Engineering.** Customer shall not reverse engineer any Hosted Analytics Services or cQuant Work Product. If Customer does so: (a) cQuant will own all rights in and to the results of such reverse engineering, including all Intellectual Property embodied therein; (b) all such results will be deemed cQuant Work Product; and (c) Customer will assign and transfer to cQuant, and hereby does assign and transfer to cQuant, all right, title, and interest in and to such results.

## **ARTICLE 12. Termination**

### **12.1 Term**

- a. **Hosted Analytics Services.** The terms and conditions of this Agreement will apply, as to any Hosted Analytics Services, throughout the applicable License Term, unless terminated earlier under another provision of this Agreement. The License Term and Customer's obligation to pay subscription fees will renew and continue automatically on a year-to-year basis after the expiration of the then-current License Term, unless Customer gives cQuant written notice of its desire not to renew the License Term, at least three business days before the end of the then-current License Term. The fees to be charged during the License Term as so renewed will not change upon renewal; *provided, however*, that if cQuant notifies Customer of a price increase, not to exceed five percent, at least ten business days before the end of the then-current License Term, the price increase will apply during the License Term as so renewed.
- b. **Professional Services.** The terms and conditions of this Agreement will apply, as to any Professional Services, until the final completion and acceptance of such Professional Services or until terminated under the terms of an applicable Order Form or Work Order.
- c. **Effect of Termination; Survival.** Upon and after termination, cQuant will cease rendering Services under this Agreement. Except as stated in the preceding sentence, the terms and conditions of this Agreement will survive termination for so long as necessary to carry out the intent of the parties.

### **12.2 Termination of Hosted Analytics Services**

- a. **By Customer.** Customer may terminate any Hosted Analytics Service before its scheduled termination date, for convenience, by so notifying cQuant at any time. Termination will become effective three business days after notice, subject to any contrary provision stated in the applicable Order Form, *e.g.*, a minimum License Term. Fees and other amounts prepaid by Customer will not be refunded upon termination under this paragraph, even if they relate to an unexpired portion of the License Term;

- [REDACTED]
- b. **By cQuant.** cQuant may terminate any Hosted Analytics Service before its scheduled termination date if (a) Customer has breached any provision of this Agreement and has failed to cure such breach within 10 calendar days after cQuant notifies Customer of the breach; (b) cQuant is required to do so by law; or (c) cQuant has elected to discontinue the Hosted Analytics Service. [REDACTED]

- c. **Procedures upon Termination of Hosted Analytics Services.** Upon termination of any Hosted Analytics Service: Customer will no longer have access to the terminated service and shall not attempt to access or use it; the terminated service will be deactivated; and the provisions of Section 6.4 regarding Customer Data will apply.

## **ARTICLE 13. Contract Formation; Changes; Precedence**

### **13.1 RESERVED.**

**13.2 Customer Responsible for Acts of Users.** Customer is responsible for the acts or omissions of its Users and other employees and contractors occurring in connection with this Agreement. This Agreement will apply to all Users; *provided, however*, that Users' rights derive entirely from Customer's rights; Users have no independent rights to use or access any Services.

**13.3 Representation of Authority to Bind Customer.** An individual who signs the Order Form on behalf of Customer represents that he or she has the authority to do so.

## APPENDIX A SERVICE LEVEL AGREEMENT

### **Uptime Warranty**

cQuant warrants that the Uptime percentage, as defined below, will equal or exceed 99.5% in each month throughout the Term (“**Uptime Warranty**”). The “**Uptime Percentage**”, during any calendar month, is equal to (x) the number of minutes that Customer is able to access the Service on a continuous basis during that calendar month divided by (y) the total number of available minutes during the same month. For purposes of the foregoing, the Customer will be considered able to access the Service on a continuous basis, and the Uptime calculation will not be affected, during any and all of the following circumstances; (a) planned outages outside of normal business hours where cQuant has provided Customer with a timely Notice of Downtime as described below ; or (b) any interruption in the ability of Customer to access the Service that continues for less than 10 minutes or results from causes beyond cQuant’s control, including, but not limited to (i) any failure in Customer’s own computer systems, telephone equipment, hardware, software or other equipment, (ii) a Force Majeure event; (iii) any act or omission by Customer or any of its users; and (iv) outage or downtime of the services of cQuant’s hosting provider, Amazon Web Service. For purposes of this definition the Service includes the complete operating environment, including the applications, data center and data network, as well as all integrated telecommunications equipment. Service does not include any of the following, if owned or operated by Customer: the data network, any data processing equipment, any telecommunications equipment or services, Internet or broadband service, or any other publicly available data communications facilities utilized by Customer.

Customer shall use, and shall provide to cQuant on demand, all log files, database records, audit logs, and other information reasonably available to enable cQuant to investigate fully all claims for breach of the Uptime Warranty (“**Warranty Claims**”) and to make a reasonably accurate, good faith judgment regarding the Customer’s due remedy, if any. At Customer’s request cQuant will make available to Customer all information used by cQuant in evaluating Customer’s Warranty Claims. cQuant may establish, and may modify from time to time, reasonable procedures for the submission of Warranty Claims.

NOTICE OF DOWNTIME. cQuant will use commercially reasonable efforts to provide Customer at least 48 hours’ notice of the date, start time, and completion time of any regularly scheduled data center downtime. cQuant will provide notification of downtime by email to Customer’s designated application administrators, and, if requested, to other users within Customer’s organization, provided that Customer has maintained a current email address for each such user in accordance with cQuant’s instructions.

### **Remedies**

Customer’s sole and exclusive remedies for breach of the Uptime Warranty will be as stated below in this section.

If Customer submits a valid Warranty Claim, cQuant will provide Customer with a refund of a portion of the subscription fees, calculated in accordance with the table below.

<b>Uptime in any Calendar Month</b>	<b>Remedy</b>
Less than 99.5% but equal to or greater than 95.0%	Refund or credit of 10% of one month's subscription fee
Less than 95.0% but equal to or greater than 90.0%	Refund or credit of 15% of one month's subscription fee
Less than 90.0%	Refund or credit of 25% of one month's subscription fee

If Customer submits one or more valid Warranty Claims for incidents occurring in each of three consecutive calendar months, then in lieu of the remedies stated in the above table, Customer may terminate its subscription for the Service on 30 days' written notice, in which event Company will pay Customer a pro-rated refund of the fees paid but not yet earned, within 10 days after Company receives Customer's demand for the same; provided, however, that any refunds previously paid under the above table will be credited in favor of cQuant.

## **Support**

### **Severity Levels – Definitions**

<b>Severity Level</b>	<b>Definition</b>
<b>1</b>	System is completely unavailable or is inoperable; i.e. users cannot log into the system or the system performance is degraded such that users are unable to use the system.
<b>2</b>	System is available, but critical business processes and multiple users are substantially impacted. Some business operations can proceed.
<b>3</b>	System is available, but business processes and multiple users are moderately impacted. Severity 3 will also cover situations where a suitable workaround has been established for a Severity 1 or Severity 2 incident. Example: A user's model run is not completing or is failing.
<b>4</b>	System is available, and a fault is identified that has minor or no business impact. Example: usability issue, cosmetic fault, etc.

### Severity Response Times

cQuant will manage incidents to the following severity timing and activity levels:

Severity Level	Response	Resolution
1	30 minutes	Three Hours
2	Two hours	24 Hours
3	Four hours	Five business days. If new code is required, code fix may be scheduled for next monthly release.
4	Within one business day	Will be scheduled into a following major software release.

### Support Procedures

Requests must be submitted during cQuant's normal business hours, which are Monday through Friday, 7 AM – 5 PM Mountain Time, excluding bank holidays. cQuant's standard support procedures are as follows:

- a. Requests for support may be submitted by any of the following methods:
  - Via a dedicated customer support email, provided to customers during their service, or
  - Via telephone at the number listed on the cQuant website, or
  - Via mail sent to the address listed on the cQuant website. cQuant will provide support for certain users via E-mail only, as specified in the appropriate Description of Service.
- b. All requests for support must be submitted by one of the specific named users who is licensed to access the Service.
- c. Support requests should include as much detail as possible in order to facilitate the resolution process. Required detail includes such items as user name, issue description and urgency, application page being used, document and vendor numbers, number of users affected, date/time, etc.
- d. Customer's application administrator or other contact must be available to assist with further information gathering or resolution testing.



## SAN DIEGO COMMUNITY POWER Report – Item 17

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To: San Diego Community Power Board of Directors

From: Joe LaCava, Chair

Subject: Board Consideration of Establishing an Ad Hoc Committee to Review Existing San Diego Community Power (Community Power) Board and Committee Compensation and Reimbursement Policy; and, if established, Chair appointment of members to the Committee

Date: August 22, 2024

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### RECOMMENDATION

Consider establishing an Ad Hoc Committee consisting of no more than three (3) Board Members, to review and recommend possible amendments to the Community Power Board and Committee Compensation and Reimbursement Policy and Chair Appointment of Such Committee

### BACKGROUND

At the February 24, 2022, Board of Directors meeting, the Board of Directors adopted a Board Compensation and Reimbursement Policy to provide per diem compensation to Directors (including Alternates) for attending Community Power Board meetings and reimbursement for actual and necessary expenses under certain circumstances. The Board has since amended the policy on three occasions. The amendments included adding reimbursement for childcare expenses in relation to Directors' attendance at special meetings of the Board of Directors, to provide per diem compensation for Directors' attendance at meetings of Board committees, and to include Board-appointed advisory committees, among other changes. The last amendment was on February 23, 2023.

### ANALYSIS

It has been over a year since the Community Power Board and Committee Compensation and Reimbursement Policy has been reviewed. During this time, Community Power has grown, and the Board of Directors are increasingly participating in Community Power meetings and activities. An Ad Hoc Committee could review whether the Board of Directors are being adequately compensated for their time spent on work related to Community Power, among other potential changes.



Pursuant to Section 6 of the Community Power's Bylaws, the Board may establish temporary ad hoc advisory committees that: (a) are composed of less than a quorum of the Board, (b) have no continuing subject matter jurisdiction, and (c) have no meeting schedule fixed by charter, ordinance, resolution, or formal action of the Board. The Chair shall appoint the members of such ad hoc committees.

This action is to consider establishing an Ad Hoc Committee to review the policy and recommend amendments. If established, the Chair will appoint no more than three (3) Board Members to the Committee. The Committee is expected to report back at the next Board meeting, or as soon thereafter as practicable.

### **COMMITTEE REVIEW**

None.

### **FISCAL IMPACT**

There is no fiscal impact associated with establishing an Ad Hoc Committee. There may be a fiscal impact if the Committee recommends amending the policy in a future Board action.

### **ATTACHMENTS**

None.