



AGENDA

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

March 28, 2024
5:00 p.m.

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

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

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

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

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

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

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

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

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

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- 1. Approve February 22, 2024 Meeting Minutes**
- 2. Receive and File Treasurer's Report for Period Ending January 31, 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 Government Affairs**
- 8. Receive and File Community Advisory Committee Monthly Report**
- 9. Receive and File Update on Regulatory and Legislative Affairs**
- 10. Approve Proposed Election to Participate in State Disability Insurance**

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.

11. Update on Residential Solar + Storage Program

Recommendation: Receive and file the update on SDCP's Residential Solar and Storage Program.

12. Approve Amendments to SDCP Legislative & Regulatory Policy Platform

Recommendation: Approve Amendment to SDCP Legislative & Regulatory Platform.

13. Approve Resource Adequacy (RA) Agreement with 90FI 8me LLC

Recommendation: Approve the proposed 5-year Resource Adequacy Agreement with 90FI 8me, LLC for up to 74 MW of (4-hour) Battery Energy System Storage (BESS) capacity and authorize the CEO to execute the agreement.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

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

DIRECTOR COMMENTS

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

ADJOURNMENT

Compliance with the Americans with Disabilities Act

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

Availability of Board Documents

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



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

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

MINUTES
February 22, 2024

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

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:04 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego) (arrived at 5:43 p.m.), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

ABSENT: None

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

PLEDGE OF ALLEGIANCE

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

SPECIAL PRESENTATIONS AND INTRODUCTIONS

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

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

Veera Tyagi, General Counsel

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

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

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

(Items 1 through 13)

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve Consent Calendar Items 1 through 13. The motion carried by the following vote:

Vote: 6-0

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

No: None

Abstained: None

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

1. Approve January 18, 2024 Meeting Minutes

Approved.

2. Receive and File Treasurer's Report for Period Ending December 31, 2023

Received and filed.

3. Receive and File Update on Programs

Received and filed.

4. Receive and File Update on Power Services

Received and filed.

5. Receive and File Update on Human Resources

Received and filed.

6. Receive and File Update on Customer Operations

Received and filed.

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

Received and filed.

8. Receive and File Update on Community Advisory Committee

Received and filed.

9. Receive and File Update on Regulatory and Legislative Affairs

Received and filed.

10. Approve Professional Services Agreement with Chandler Asset Management, Inc. for up to \$250,000 for Financial and Investment Portfolio Management Services through February 2025

Approved.

11. Approve 2024 Community Advisory Committee Work Plan

Approved.

12. Approve Community Clean Energy Grant Program Policy

Approved.

13. Approve Ascend Analytics Pilot Extension Agreement for PowerSIMM Pilot Support Services through July 31, 2024

Approved.

REGULAR AGENDA

14. Appoint Members to the Finance and Risk Management Committee

Chair LaCava (City of San Diego) nominated Director McCann (Chula Vista), Director Aguirre (Imperial Beach), and Director Yamane (National City) for appointment to the Finance and Risk Management Committee.

ACTION: Motioned by Director Parent (La Mesa) and seconded by Director McCann (Chula Vista) to appoint Director McCann (Chula Vista), Director Aguirre (Imperial Beach) and Director Yamane (National City) to the Finance and Risk Management Committee. The motion carried by the following vote:

Vote: 6-0

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

15. Approve Fiscal Year 2023-24 Operating Budget Amendment

CFO/Treasurer Washington provided a PowerPoint presentation on the mid-year budget amendment, highlighting the budget development timeline, the proposed Fiscal Year (FY) 2023-2024 amended budget, the change in the net operating revenue, total expenses and net position, and the budget changes by category.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Aguirre (Imperial Beach) to approve FY 2023-2024 Operating Budget Amendment. The motion carried by the following vote:

Vote: 6-0

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

16. Presentation on Clean Energy Prepayment Financing

CFO/Treasurer Washington and Mike Berwanger, Managing Director, PFM Advisors, provided a PowerPoint presentation on the clean energy prepayment financing, highlighting the prepayment transaction background, procedure, and goal, prepayments that were completed by public utilities in California, prepayments that were completed by Community Choice Aggregations (CCA) in California, entities involved in an energy prepayment transaction, energy prepayment structure mechanics, how savings would be generated, the limited assignment of a power purchase agreement, and the favorable risk allocation – “take-and-pay” structure.

Following Board questions and comments, no action was taken.

17. Quarterly Report on Community Advisory Committee

Community Advisory Committee Chair Vasilakis provided an update on the CAC's proceedings, efforts, and accomplishments for quarter ending January 31, 2024.

Following Board questions and comments, no action was taken.

18. Approve Load Management Standards Compliance Plan

Senior Regulatory Analyst Gunther and Senior Rates and Strategy Analyst Lu provided a PowerPoint presentation on the Load Management Standards Compliance Plan, highlighting the Load Management Standards (LMS), LMS amendment requirements, the compliance plan requirements and roadmap, and next steps.

Vice Chair Lawson-Remer (County of San Diego) arrived to the meeting at 5:43 p.m.

ACTION: Motioned by Director Yamane (National City) and seconded by Director McCann (Chula Vista) to approve the Load Management Standards Compliance Plan. The motion carried by the following vote:

Vote: 7-0

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

No: None

Abstained: None

Absent: None

19. Update on Regional Grid Developments

Senior Legislative Manager Welch and Senior Regulatory Analyst Gunther provided a PowerPoint presentation on the regional grid developments, highlighting the purpose of grid regionalization, the steps California had already taken to increase regional coordination, what was being debated, potential benefits and concerns of grid regionalization, status of the West-Wide Pathways process, CCA engagement and next steps.

Following Board questions and comments, no action was taken.

20. Approve Pilot Project Agreement with GRID Alternatives

Director of Programs Santulli provided a PowerPoint presentation on the Pilot Project Agreement with GRID Alternatives, highlighting the Disadvantaged Communities – Single-Family Solar Homes (DAC-SASH) Readiness Pilot Program background, goal, and implementation, and the next steps.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Vice Chair Lawson-Remer (County of San Diego) to approve the Pilot Project Agreement with GRID Alternatives in an amount up to \$550,000 for roof replacements/repairs in connection with the DAC-SASH Program. The motion carried by the following vote:

Vote: 7-0

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

21. Approve Nobel Solar, LLC Power Purchase Agreement

Power Services Senior Portfolio Manager Torres and Power Services Portfolio Manager Mink provided a PowerPoint presentation on the Nobel Solar, LLC Power Purchase Agreement, highlighting SDCP's long-term procurement, and the Purple Sage Energy Center project summary, key terms, staff analysis, workforce development, and community benefits.

ACTION: Motioned by Vice Chair Lawson-Remer (County of San Diego) and seconded by Director McCann (Chula Vista) to approve a 20-year Power Purchase Agreement with Nobel Solar, LLC for a 400 MW Solar Photovoltaic electric generation facility and a 400 MW (4-hour) Battery Energy Storage System Facility. The motion carried by the following vote:

Vote: 7-0

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

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CFO/Treasurer Washington reported on SDCP's ongoing efforts and recent activities and events.

DIRECTOR COMMENTS

There were no Director comments.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 6:26 p.m.

Megan Wiegelman
Interim Board Clerk



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Review of Treasurer's Report for Period Ending 01/31/2024

Date: March 28, 2024

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending 01/31/24.

BACKGROUND

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

SDCP has prepared its year-to-date financial statements for the period ended January 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 to be 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 in February 2024, the review of the Treasurer's Report for Period ending January 31, 2024, is a comparison against the original Fiscal Year 2023-24 budget adopted by the Board on June 22, 2023.

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 01/31/24: \$886.94 million in net operating revenues were reported compared to \$922.86 million budgeted for the period. \$664.89 million in total expenses were reported (including \$648.42 million in energy costs) compared to \$636.09 million budgeted for the period (including \$604.20 million budgeted for energy costs). After expenses, SDCP's change in net position of \$222.05 million was reported for Fiscal Year 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Adopted Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY24 as of 01/31/24 (7 mos)	FY24 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 886,943,118	\$ 922,855,054	\$ (35,911,936)	96%	
Total Expenses	\$ 664,888,628	\$ 636,090,344	\$ 28,798,284	105%	
Change in Net Position	\$ 222,054,490	\$ 286,764,710	\$ (64,710,220)	-23%	

- Net operating revenues finished \$35.91 million (or 4.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather in the summer months.
- Operating expenses finished \$28.80 million (or 5.0 percentage points) over the budget primarily due to higher-than-expected energy costs and higher usage in the winter months.

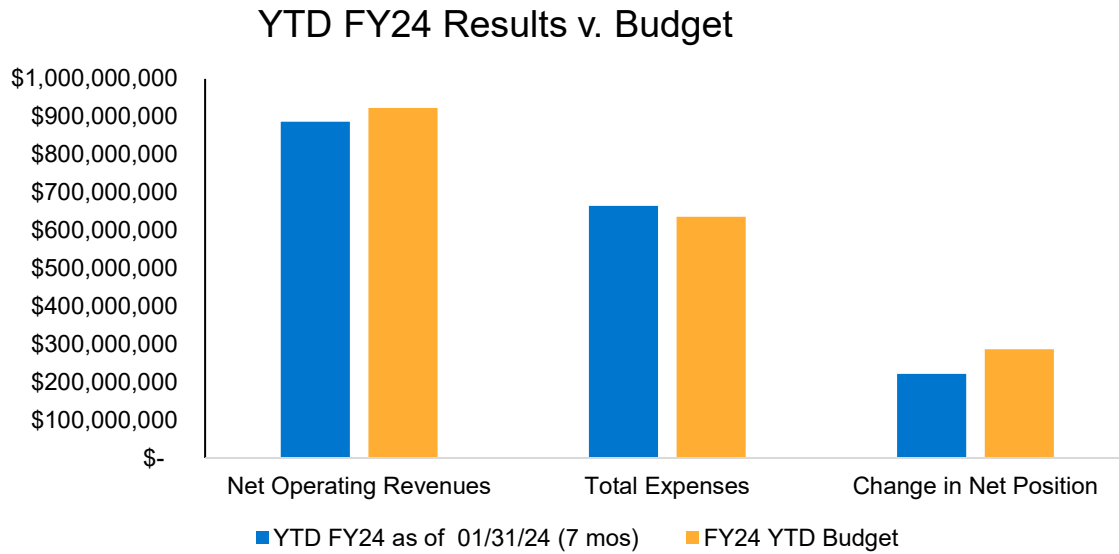
Financial results for the period underperformed the projections presented in the year-to-date proforma. SDCP's change in net position was 23% under the projection primarily due to actual energy costs being higher than projected.

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

Table 2: Proforma Comparison Versus Actual Results

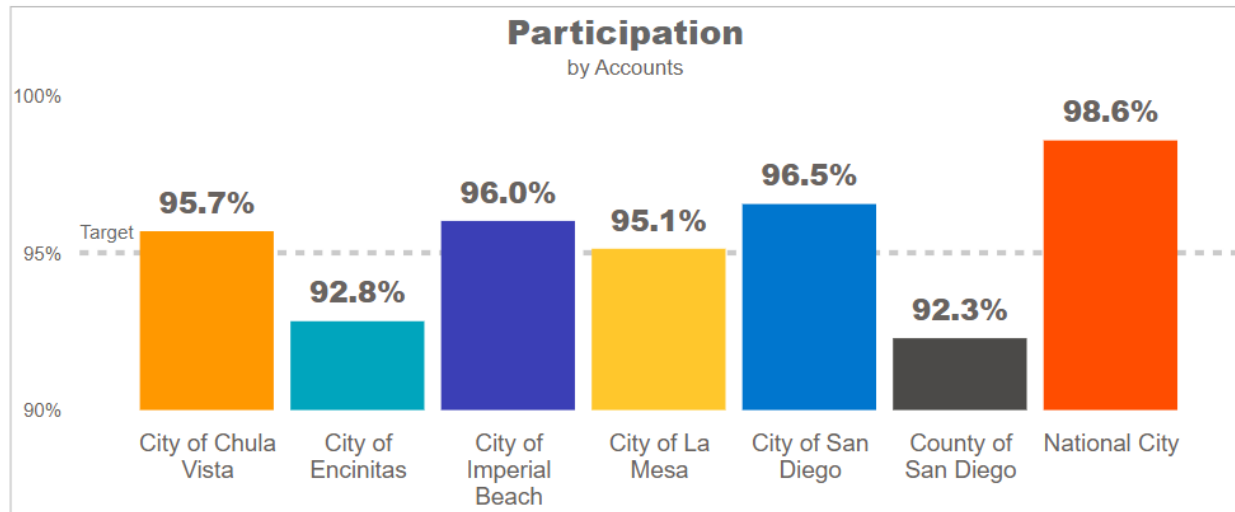
Proforma Comparison					
	YTD FY24 as of 01/31/24 (7 mos)	FY24 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 886,943,118	\$ 922,855,054	\$ (35,911,936)	-4%	
Total Expenses	\$ 664,888,628	\$ 635,294,295	\$ 29,594,333	5%	
Change in Net Position	\$ 222,054,490	\$ 287,560,759	\$ (65,506,269)	-23%	

Figure 1: Proforma versus Actual Results



For the period ending 01/31/24, SDCP contributed \$222,054,490 to its reserves but was expected to gain \$286,764,710 per the Fiscal Year 2023-24 adopted budget. Total SDCP reserves at the end of the period were \$369,577,498 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$519,577,498. SDCP has a total Fiscal Year 2023-24 year-end reserve target of \$491,079,452, which is equivalent to 180-days of total operating expenses as set in SDCP’s Reserve Policy and Strategic Goals.

Figure 2: Participation Rates as of 03/05/2024



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,641	97,863	4,222	95.7%
City of Encinitas	26,401	28,442	2,041	92.8%
City of Imperial Beach	10,497	10,933	436	96.0%
City of La Mesa	28,000	29,434	1,434	95.1%
City of San Diego	600,361	621,818	21,457	96.5%
County of San Diego	171,612	190,246	14,680	92.3%
National City	19,162	19,526	279	98.6%
Total	949,674	998,262	44,549	95.5%

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

Staff are also presenting State of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 03/01/2024.

Figure 3: State of SDCP Arrearages as of 03/01/2024

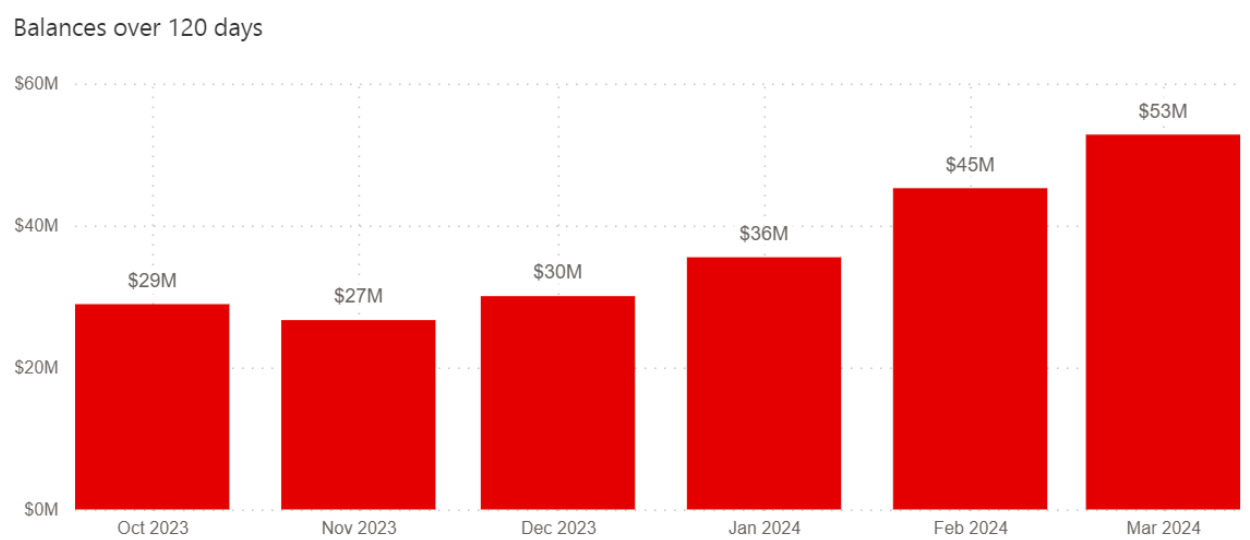
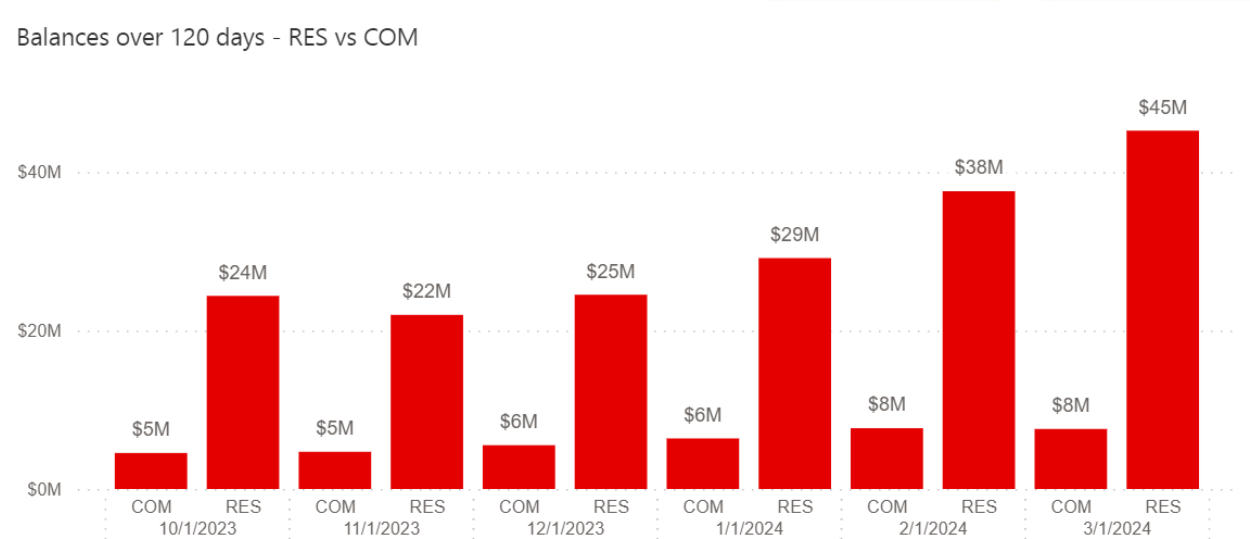


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 03/01/2024



FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2024 Year-to-Date Period Ended 01/31/24 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 January 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
February 28, 2024

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

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 369,577,498
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	104,088,047
Accrued revenue	46,676,845
Prepaid expenses	2,646,047
Other receivables	551,628
Deposits	4,053,373
Total current assets	<u>528,093,438</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,647,000
Lease asset, net of amortization	1,489,759
Capital assets, net of depreciation	138,492
Total noncurrent assets	<u>3,275,251</u>
Total assets	<u><u>531,368,689</u></u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	110,073,026
Accounts payable	710,920
Other accrued liabilities	5,609,097
State surcharges payable	218,791
Deposits - energy suppliers	4,365,000
Interest and finance costs payable	197,010
Lease liability	800,687
Total current liabilities	<u>121,974,531</u>
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	783,393
Total noncurrent liabilities	<u>1,407,393</u>
Total liabilities	<u><u>123,381,924</u></u>

NET POSITION

Net investment in capital assets	44,171
Restricted for collateral	2,147,000
Unrestricted	405,795,594
Total net position	<u><u>\$ 407,986,765</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Seven Months Ended January 31, 2024

OPERATING REVENUES

Electricity sales, net	\$ 886,135,868
Grant revenue	807,250
Liquidated damages	49,700
Total operating revenues	<u>886,992,818</u>

OPERATING EXPENSES

Cost of electricity	648,472,169
Contract services	11,105,859
Staff compensation	6,074,895
Other operating expenses	2,108,138
Depreciation and amortization	358,159
Total operating expenses	<u>668,119,220</u>
Operating income	<u>218,873,598</u>

NON-OPERATING REVENUES (EXPENSES)

Interest income	4,299,790
Interest and financing expense	(1,198,954)
Nonoperating revenues (expenses), net	<u>3,100,836</u>

CHANGE IN NET POSITION

	221,974,434
Net position at beginning of year	<u>186,012,331</u>
Net position at end of year	<u><u>\$ 407,986,765</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Seven Months Ended January 31, 2024

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 926,138,609
Receipts from liquidated damages	49,700
Receipts of supplier security deposits	30,782,233
Receipts from wholesale sales	11,321,737
Other operating receipts	807,250
Payments to suppliers for electricity	(609,751,850)
Payments for goods and services	(11,415,211)
Payments of staff compensation and benefits	(5,840,846)
Payments for deposits and collateral	(2,774,693)
Payments of state surcharges	(1,742,916)
Net cash provided by operating activities	<u>337,574,013</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments - bank note	(35,730,000)
Interest and related expense payments	<u>(1,527,503)</u>
Net cash provided (used) by non-capital financing activities	<u>(37,257,503)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of lease liability	(284,004)
Payments to acquire capital assets	<u>(71,550)</u>
Net cash (used) by capital and related financing activities	<u>(355,554)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>3,932,662</u>
Net change in cash and cash equivalents	303,893,618
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	<u><u>\$ 371,724,498</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 369,577,498
Restricted cash - current	500,000
Restricted cash - noncurrent	1,647,000
Cash and cash equivalents	<u><u>\$ 371,724,498</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Seven Months Ended January 31, 2024

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

Operating income	\$ 218,873,598
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	358,159
(Increase) decrease in:	
Accounts receivable, net	6,425,684
Accrued revenue	32,115,939
Prepaid expenses	27,881,451
Other receivables	49,215
Deposits	13,602,977
Increase (decrease) in:	
Accrued cost of electricity	32,727,683
Accounts payable	271,655
Other accrued liabilities	1,814,450
State surcharges payable	(281,798)
Supplier security deposits	3,735,000
Net cash provided by operating activities	<u><u>\$ 337,574,013</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 January 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
February 28, 2024

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Seven Months Ended January 31, 2024**

	2023/24 YTD Budget	2023/24 YTD Actual	2023/24 YTD Budget Variance (Under) Over	2023/24 YTD Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	961,307,348	\$ 923,058,196	(38,249,152)	96%	\$ 1,346,325,552	\$ 423,267,356
Less: Uncollectible Customer Accounts	(38,452,294)	(36,922,328)	1,529,966	96%	(53,853,022)	(16,930,694)
Grant Revenue	-	807,250	807,250		-	(807,250)
Total Revenues and Other Sources	<u>922,855,054</u>	<u>886,943,118</u>	<u>(35,911,936)</u>		<u>1,292,472,530</u>	<u>405,529,412</u>
OPERATING EXPENSES						
Cost of Energy	604,191,861	648,422,468	44,230,607	107%	948,529,425	300,106,957
Professional Services and Consultants	13,831,464	10,673,631	(3,157,833)	77%	22,939,626	12,265,995
Personnel Costs	7,572,419	6,074,895	(1,497,524)	80%	13,178,031	7,103,136
Marketing and Outreach	1,793,738	1,344,256	(449,482)	75%	2,973,829	1,629,573
General and Administration	4,871,111	1,350,291	(3,520,820)	28%	7,861,973	6,511,682
Programs	167,833	118,750	(49,083)	71%	278,250	159,500
Total Operating Expenses	<u>632,428,426</u>	<u>667,984,291</u>	<u>35,555,865</u>		<u>995,761,134</u>	<u>327,776,843</u>
Operating Income (Loss)	<u>290,426,628</u>	<u>218,958,827</u>	<u>(71,467,801)</u>		<u>296,711,396</u>	<u>77,752,569</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	4,299,790	4,299,790		-	(4,299,790)
Interest and Related Expenses	(1,421,918)	(1,204,127)	217,791	85%	(2,437,574)	(1,233,447)
Transfer to Capital Investment Program	<u>(2,240,000)</u>	<u>-</u>	<u>2,240,000</u>	0%	<u>(3,840,002)</u>	<u>(3,840,002)</u>
Total Non-Operating Revenues (Expenses)	<u>(3,661,918)</u>	<u>3,095,663</u>	<u>6,757,581</u>		<u>(6,277,576)</u>	<u>(9,373,239)</u>
NET INCREASE (DECREASE)	<u>\$ 286,764,710</u>	<u>\$ 222,054,490</u>	<u>\$ (64,710,220)</u>		<u>\$ 290,433,820</u>	<u>\$ 68,379,330</u>

See accountants' compilation report.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs

Via: Jack Clark, Chief Operating Officer

Subject: Update on Programs

Date: March 28, 2024

RECOMMENDATIONS

Receive and file update on customer energy programs.

BACKGROUND

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

ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

Building Electrification

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

Status: Since May 2023, Staff have been working with a coalition of Southern California agencies led by the Southern California Regional Energy Network (“SoCalREN”) to prepare for the CEC’s Equitable Building Decarbonization (“EBD”) direct install program. On March 14, 2024, Staff attended the CEC’s pre-solicitation workshop to seek input on the draft Request for Proposal (“RFP”) for the EBD program administrators. The CEC walked interested parties through the RFP’s rules, draft scope of work, and budget. At the workshop, Staff learned that the CEC expects to release the RFP on or after April 30, 2024, with responses due 60 days later.

Next Steps: With a tight timeframe to submit a response, Staff will continue to work with the coalition to prepare a strong response to the anticipated RFP for regional administrators.

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

Status: The U.S. EPA’s CPRG Program provides \$5 billion in grants to states, local governments, tribes, and territories to develop and implement ambitious plans for reducing greenhouse gas emissions and other harmful air pollution. Authorized under Section 60114 of the Inflation Reduction Act, this two-phase program provides \$250 million for noncompetitive planning grants and approximately \$4.6 billion for competitive implementation grants.

During the first phase of the program (planning grants), the San Diego Association of Governments (“SANDAG”) was awarded a grant to conduct climate action planning in the region. SANDAG worked with local governments, community-based organizations, and other stakeholders to create a Priority Climate Action Plan (“PCAP”), which was published in March 2024. It identifies near-term actions and policies that can be implemented quickly to reduce air pollution.

The second phase of the program (implementation grants) is now open until April 1, 2024; for the general competition, EPA anticipates awarding individual grants between \$2 million and \$500 million, with funding tiers allowing comparably sized projects to compete against one another. SANDAG is leading a regional application for grant funding to implement measures included in the PCAP. SDCP, via its role as the proposed SDREN administrator, is identified as the regional program administrator for building electrification and solar + storage incentive programs. A proposed building electrification program would focus on providing upfront incentives for heat pump water heaters and space heating/cooling equipment that would nearly eliminate the incremental cost to install these technologies. A proposed solar + storage program would expand SDCP’s Residential Solar and Storage Program’s upfront incentive to the full San Diego County (instead of only SDCP customers), continuing to support the solar industry after Net Billing Tariff (“NBT”) implementation.

Next Steps: SDCP will provide a Letter of Commitment to support the application in late March 2024. Grant awards are anticipated in October 2024.

Energy Education

Energy Education Website

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

Energy Efficiency

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

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



FLEXmarket Pilot

Status: On July 27, 2023, SDCP and Calpine Energy Solutions, LLC (“Calpine”) amended its contract allowing Calpine and its partner, Recurve Analytics (“Recurve”), to develop and launch a Summer Peak Load Reduction Pilot (“Pilot”). The intent of the Pilot was to test out new approaches for meeting summer peak load utilizing Recurve’s FLEXmarket approach (measured, pay-for-performance savings) and to evaluate pilot design and scalability for future summer and year-round peak load reduction programs. The total funding to support the Pilot is \$450,000 (\$150,000 from Calpine and \$300,000 from SDCP). Additionally, Calpine and Recurve are contributing \$100,000 of in-kind support to the Pilot. Under the Pilot, SDCP provides direct funding only for actual savings realized relative to a control group of buildings. SDCP has not yet incurred direct costs to support the Pilot.

Currently, the contract terms are effective through November 30, 2024, which includes a 12-month evaluation period for projects submitted through November 30, 2023. SDCP Staff intend to adjust the scope of work and extend the contract terms to accept additional projects. The adjusted scope of work includes having the eligibility requirements focus on small and medium sized commercial customers located in “hard to reach”¹ communities to further inform the anticipated SDREN program of similar design.

Next Steps: SDCP will execute a no-cost contract amendment with Calpine for services related to the Pilot and will work with Calpine and Recurve through November 30, 2025 to implement the Pilot. The findings of this Pilot will inform future larger competitive procurement efforts expected through SDREN.

Regional Energy Network (“REN”) Formation

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

Flexible Load

Flexible Load Strategy

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

¹ A commercial customer is considered hard to reach if the business is located in a disadvantaged community per CalEnviroScreen and meets one of the following criteria, or if the business is outside of a disadvantaged community, the customer is considered hard to reach by meeting all of the following criteria: 1) Primary language spoken is not English; 2) Business has twenty-five or fewer employees and/or is classified as “Very Small” (customers whose annual electric demand is less than 20 kW and/or less than 10,000 therms); 3) Business is operating from leased or rented facilities.

Grant Programs

Community Clean Energy Grant Program

Status: At the February 2024 Board meeting, SDCP's Board approved the updated Community Clean Energy Grant Program [Policy](#). The [FY 2023-24 grant cycle](#) then opened on February 26, 2024. SDCP and San Diego Foundation (the program administrator) promoted the grant launch through a press release, direct outreach to organizations, and website, social media, and newsletter updates.

Next Steps: The FY 2023-24 grant application closes on April 5, 2024. Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

Member Agency Grant Program

Status: SDCP's FY 2023-24 Member Agency Grant Program opened on February 5, 2024. During the application period, San Diego Regional Climate Collaborative (the program administrator) is working directly with SDCP member agency staff to provide project development support and technical assistance.

Next Steps: The FY 2023-24 grant application closes on April 12, 2024. Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

Solar and Energy Storage

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

Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program. Staff anticipate bringing back an item to the Board in Q2 CY 2024 to update the tariff with support for virtual and aggregation versions of NBT.

Residential Solar + Storage Program

Status: Based on feedback collected to date from stakeholders and research on other related solar and storage incentive programs, Staff have developed a program design for SDCP's residential solar + storage program. Staff solicited feedback on the initial program design at the February 2024 Community Advisory Committee ("CAC") meeting and are presenting the final program design at the March 2024 Board meeting.

Next Steps: Staff anticipate the program to launch in Q2/Q3 CY 2024.

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

Status: Please refer to [Item 20](#) of the February 2024 Board staff report for the most recent update on this program.

Solar for Our Communities

Status: The Disadvantaged Communities Green Tariff ("DAC-GT") and Community Solar Green Tariff ("CSGT") Request for Offer ("RFO") closed on February 24, 2024. Staff



received a total of 10 bids from two developers. The proposed project site locations are all within eligible Disadvantaged Communities (“DACs”) in SDCP’s or SDG&E’s service territory. The proposed site locations are in the cities of Chula Vista, El Cajon, Lemon Grove, National City, and San Diego.

Next Steps: Staff will follow up with RFO respondents as necessary from February 26 to March 25, 2024, and send supplier notification for SDCP’s short list selection by April 29, 2024. The evaluation team will begin reviewing offers in early May 2024 and anticipate completing the evaluation by June 2024. Staff will present awarded bids to the Board for approval prior to submitting executed Power Purchase Agreements (“PPAs”) to the California Public Utilities Commission (“CPUC”) via a Tier 2 Advice Letter for approval no later than 180 days following the notification of selected bidders. Once given approval, Staff expect to enroll eligible customers in both programs by Q1 CY 2025.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Managing Director of Power Services
Via: Karin Burns, Chief Executive Officer
Subject: Update on Power Resources
Date: March 28, 2024

RECOMMENDATION

Recommendation: Receive and file update on Power Resources

BACKGROUND

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

ANALYSIS AND DISCUSSION

Power Services Staffing

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

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

Long-term Renewable Energy RFPs



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

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

Local Development

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

As Program Administrators of the CPUC’s Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which were due February 24, 2024. Staff is currently reviewing all submitted offers as well as reviewing a recent Proposed Decision by the CPUC that has potential impacts to the existing programs.



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

Near-term California power markets have softened due to a mild winter and significant Sierra snowpack, which somewhat 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 5

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: March 28, 2024

RECOMMENDATION

Recommendation: Receive and file update on Human Resources

BACKGROUND

Human Resources has been working on the following priorities:

Hiring

- This month, SDCP welcomed Linda Robertson to the team as our new IT Manager.

Current open positions include:

- Settlements Analyst
- Community Engagement Associate

ANALYSIS AND DISCUSSION

Our 2023 Performance Review Cycle has now concluded. Employees were able to give and receive valuable feedback and will now focus on updating current goals and individual development plans. Merit increases will take effect in April.



The HR team is excited to offer new wellness activities focused on fitness and stress reduction along with monthly spotlights on mental health awareness over the next few months.

Our HR Strategic Initiatives have been finalized for 2024. We look forward to rolling out additional information sessions on retirement education and benefits planning while working to configure an organizational move to the Paylocity payroll platform.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER

Staff Report – Item 6

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: March 28, 2024

RECOMMENDATION

Receive and file an update on various customer operations.

BACKGROUND

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

ANALYSIS AND DISCUSSION

A) Mass Enrollment Update

Phase 4:

Mass enrollment for our Non-Net Energy Metering (NEM) customers in National City and Unincorporated County of San Diego is officially complete as of May 3, 2023. As of March 18, 2024, SDCP is serving a cumulative total count of **951,949** active accounts correlating to **1,151,031** meters. There are **173,446** active accounts already enrolled in Unincorporated County of San Diego and **19,147** in National City.

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

B) Customer Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of March 5th, 2024:

I. Total Opt Outs - Including Active and Inactive

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

Opt Outs by Jurisdiction	2021	2022	2023	2024-01	2024-02	Total
City of Chula Vista	266	3,472	748	43	39	4,568
City of Encinitas	66	1,888	229	15	14	2,210
City of Imperial Beach	32	345	99	15	4	495
City of La Mesa	85	1,272	235	14	17	1,622
City of San Diego	1,077	19,278	3,187	200	174	23,914
County of San Diego			13,597	698	422	14,717
National City			284	11	5	300
Total	1,526	26,253	18,379	996	675	47,826

Opt Outs by Class Code	2021	2022	2023	2024-01	2024-02	Total
Residential	38	25,717	16,762	957	628	44,097
Commercial/Industrial	1,490	536	1,617	39	47	3,729
Total	1,526	26,253	18,379	996	675	47,826

Opt Outs by Reason	2021	2022	2023	2024-01	2024-02	Total
Concerns about government-run power agency	24	1,496	963	24	25	2,532
Concerns about lack of equivalent CCA programs		132	89	2	4	227
Decline to provide	227	3,596	2,528	102	73	6,526
Dislike being automatically enrolled	203	7,214	5,474	254	171	13,316
Existing relationship with the utility	2	2,394	1,968	108	65	4,537
Have grid reliability concerns	1	292	252	6	5	556
Have renewable Energy Reliability Concerns	6					6
Other	818	2,653	1,547	88	64	5,170
Rate or additional cost concerns	6	7,754	4,905	376	236	13,275
Rate or Cost Concerns	233					233
Service or billing concerns	6	724	655	36	32	1,453
Total	1,526	26,253	18,379	996	675	47,826

Opt Outs by Method	2021	2022	2023	2024-01	2024-02	Total
Customer Service Rep (CSR)	1,098	7,002	4,380	270	179	12,928
Interactive Voice Response (IVR)	101	4,899	3,792	215	168	9,175
Web	327	14,353	10,208	511	328	25,726
Total	1,526	26,253	18,379	996	675	47,826

**Historical opt outs including inactive accounts as of 3/5/2024.*

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

Opt Ups by Jurisdiction	2021	2022	2023	2024-01	2024-02	Total
City of Chula Vista	701	168	55	3	1	928
City of Encinitas	18	1	1			20
City of Imperial Beach	60	29	11	1	1	102
City of La Mesa	148	118	19	1	2	288
City of San Diego	3,163	2,868	484	20	27	6,548
County of San Diego			200	10	8	218
National City			11		17	28
Total	4,090	3,184	781	35	56	8,131

Opt Ups by Class Code	2021	2022	2023	2024-01	2024-02	Total
Residential	3	2,895	550	30	22	3,498
Commercial/Industrial	4,087	290	231	5	34	4,634
Total	4,090	3,184	781	35	56	8,131

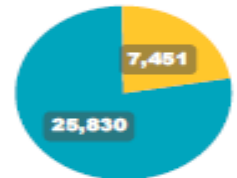
Opt Ups by Method	2021	2022	2023	2024-01	2024-02	Total
Customer Service Rep (CSR)	4,059	1,369	301	9	30	5,755
Interactive Voice Response (IVR)	4	81	78	8	13	184
Web	27	1,738	402	18	13	2,196
Total	4,090	3,184	781	35	56	8,131

Current Active Power100 Accounts

Active Power100 Accounts

TownOrTerritory	Count
City of Encinitas	25,830
City of San Diego	6,012
City of Chula Vista	873
City of La Mesa	255
County of San Diego	206
City of Imperial Beach	78
City of National City	27
Total	33,281

Active Power100 Opt vs Defaulted



● Encinitas Defaulted ● Opted Up

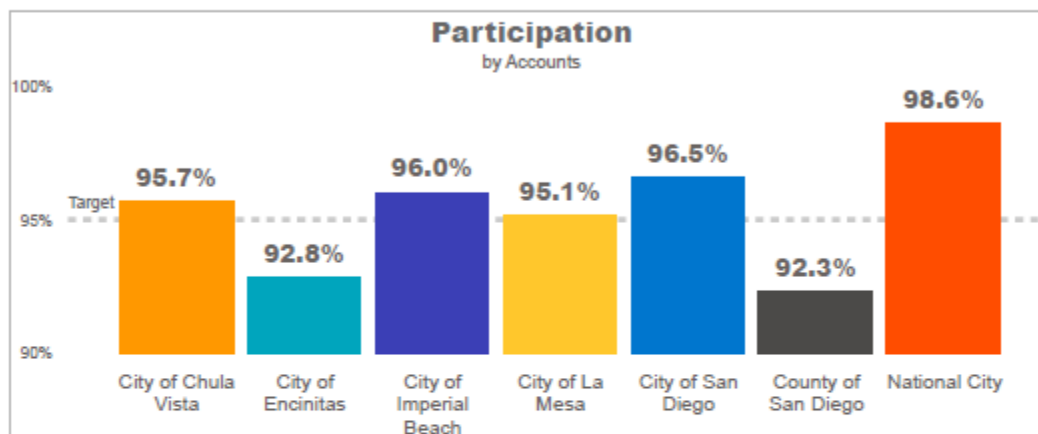
III. Opt Downs from Power100 - Including Active and Inactive

Opt Downs by Jurisdiction	2021	2022	2023	2024-01	2024-02	Total
City of Chula Vista		1	4			5
City of Encinitas	35	425	71	6	3	540
City of Imperial Beach		1				1
City of La Mesa		2				2
City of San Diego		26	13	2		41
County of San Diego			5			5
Total	35	455	93	8	3	594

Opt Downs by Class Code	2021	2022	2023	2024-01	2024-02	Total
Residential		433	84	7	3	527
Commercial/Industrial	35	22	9	1		67
Total	35	455	93	8	3	594

Opt Downs by Method	2021	2022	2023	2024-01	2024-02	Total
Customer Service Rep (CSR)	31	305	62	4	3	405
Interactive Voice Response (IVR)	4	26	3	1		34
Web		124	28	3		155
Total	35	455	93	8	3	594

Participation by Jurisdiction



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,641	97,863	4,222	95.7%
City of Encinitas	26,401	28,442	2,041	92.8%
City of Imperial Beach	10,497	10,933	436	96.0%
City of La Mesa	28,000	29,434	1,434	95.1%
City of San Diego	600,361	621,818	21,457	96.5%
County of San Diego	171,612	190,246	14,680	92.3%
National City	19,162	19,526	279	98.6%
Total	949,674	998,262	44,549	95.5%

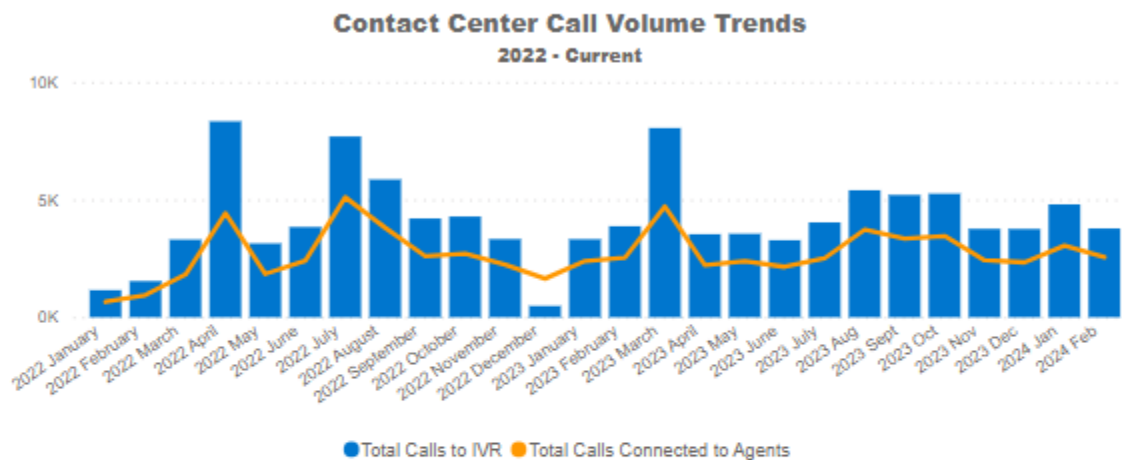
Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM)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

C) Contact Center Metrics

Call volumes in February remained steady compared to January. With the transition to our Board-approved rates effective as of February 1st, 2024, along with SDG&E's latest rate adjustment as of March 1st, 2024, call volumes are expected to increase in March.

The chart below summarizes contact made by customers into our Contact Center broken down by month through March 5th, 2024:

V. Contact Center Metrics

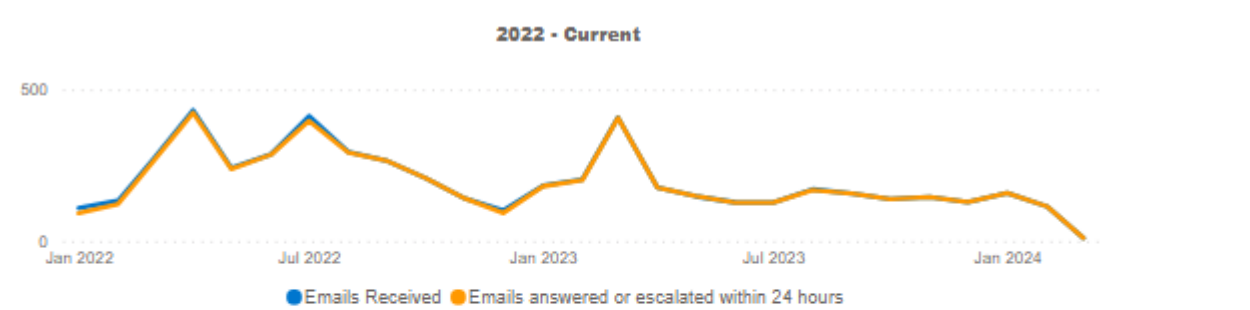


Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	Total					Total
	2021	2022	2023	2024-01	2024-02	
Total Calls to IVR	2,289	47,118	52,977	4,798	3,774	110,956
Total Calls Connected to Agents	1,401	30,174	34,173	3,041	2,552	71,341
Avg Seconds to Answer	20	12	7	11	16	12
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.8	9.3	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	95.48%	92.62%	96.31%
Abandon Rate	0.57%	0.36%	0.19%	0.46%	0.35%	0.36%

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

D) Customer Service Email Trends



Customer Service Emails						
	Total					
	2021	2022	2023	2024-01	2024-02	Total
Emails Received	272	2,894	2,116	159	115	5,556
Emails answered or escalated within 24 hours	257	2,821	2,107	159	115	5,459
Completion (%)	94%	96%	100%	100%	100%	97%

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

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER

Staff Report – Item 7

To: San Diego Community Power Community Advisory Committee

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Marketing, Public Relations, and Local Government Affairs

Date: March 28, 2024

RECOMMENDATION

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

BACKGROUND

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

ANALYSIS AND DISCUSSION

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

Recent and Upcoming Public Engagement Events

Cardiff Farmers' Market
Malcolm X Library
La Mesa Branch Library
North San Diego County Business Chamber Grand Opening
NAIOP San Diego
San Diego Regional Chamber of Commerce Anniversary Celebration
Collier Park Reopening
Encinitas Chamber of Commerce Health and Wellness Expo
Logan Heights Library
Imperial Beach Neighborhood Food Pantry
Pacific Beach Library
San Ysidro Library
Norman Park Senior Center

Balboa Library
Pacific Beach Cleanup
National City District 3 Meeting
Mira Mesa Library
Family Health Centers Spirit of the Barrio Luncheon
San Diego Festival of Science and Engineering
San Diego Women's Week
The Association of Women in Water, Energy and Environment
National City Community Breakfast
SDSU Sustainable Career Fair
Juniper Canyon Cleanup
SunCoast Farmers' Market
Goodwill Employment Center Resource and Job Fair
"Understanding Your Bill" Virtual Workshop
Rolando Library
San Diego Wave Fútbol Club Home Opener Fan Fest
Carmel Mountain Ranch Library
Habitat Restoration - San Diego River Park Foundation

Marketing, Communications and Outreach

SDCP has been working with local media to provide the public with information about its renewable power procurement efforts. 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 team is leading SDCP's first "Understanding Your Bill" virtual workshop on March 20. This webinar is the first of a series of online and in-person workshops that will be aimed at answering customer questions and connecting customers with programs and practices that can save them money.

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



SDCP has 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 SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Receive and File Community Advisory Committee Monthly Report
Date: March 28, 2024

RECOMMENDATION

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

BACKGROUND

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

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

At the direction of the Chief Executive Officer, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. The next quarterly presentation will take place during the April 25, 2024 Board of Directors meeting.

ANALYSIS AND DISCUSSION

Due to a light agenda, the regular meeting of the CAC scheduled for March 14, 2024 at 5:30 pm was canceled at the direction of the Chair. A cancellation notice was publicly posted on March 7, 2024. The CAC's next regular meeting is scheduled for April 11, 2024.

As of March 19, 2024, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of Imperial Beach. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies have been advertised at meetings, community events, and through SDCP's social media.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

There is no fiscal impact associated with this item.

ATTACHMENTS

Attachment A: Notice of Cancelation for the Community Advisory Committee meeting of March 14, 2024





SAN DIEGO COMMUNITY POWER

CANCELLATION OF THE REGULAR MEETING OF THE COMMUNITY ADVISORY COMMITTEE

Notice is hereby given that the Regular Meeting of the Community Advisory Committee scheduled for March 14, 2024 at 5:30 pm has been canceled.

Xiomalys Crespo
Community Engagement Manager

Dated: March 7, 2024





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: March 28, 2024

RECOMMENDATIONS

Receive and file 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

Remote Grids

Background

As described in [Item 4 of the October 12, 2023, CAC agenda packet](#), San Diego Gas and Electric (SDG&E) submitted an advice letter (AL) seeking approval by the CPUC of their Remote Grid Standalone Power System Addendum Agreement in September 2023. Remote grids are standalone energy resources and infrastructure for permanent energy delivery to customers who would no longer be part of the larger distribution grid. Remote grids are intended to serve small loads in remote locations where distribution lines are expensive and/or difficult to maintain.

On September 26, 2023, San Diego Community Power and Clean Energy Alliance ("Joint CCAs") filed a protest to the advice letter, raising several concerns and requesting several modifications. Key modification requests included:

- Require SDG&E to get CCA concurrence prior to deploying a remote grid in a CCA service area
- Clarify that the SDG&E remote grid initiative is a capped pilot and additional, formal CPUC deliberation (which allows for increased stakeholder input) will be required if program expansion is pursued
- Require remote grids should use at least 70% renewable energy
- Clarify that generation revenue from CCA customers served by remote grids will be delivered to the CCA
- Require customer agreement and consent to remote grid service
- Have rigorous reporting requirements for SDG&E's remote grids to ensure accountability
- Require SDG&E to consult with customers to account for planned increases to load to appropriately size remote grid systems

Update: CPUC Draft Resolution Approving SDG&E Remote Grid Advice Letter

On February 13, 2024, the CPUC issued a draft resolution approving, with modifications, SDG&E's advice letter seeking approval of their remote grid standalone power system addendum agreement. The draft resolution modifications largely result in several material outcomes that align with the requests of the Joint CCAs. Key affirmations include:

- The remote grid initiative is a capped pilot
- Generation revenue from CCA customers will be remitted to the CCA
- Customer agreement is required prior to remote grid services
- SDG&E will need to submit a report that contains information such as remote grid performance and costs

While these outcomes are positive, the Joint CCAs filed a response to the draft resolution on March 4th to reiterate several requests for inclusion in the final resolution:

- Require CCA concurrence prior to deploying a remote grid in a CCA service area
- Require formal CPUC deliberation with an increased opportunity for stakeholder input if program expansion is pursued
- Specifically require SDG&E's report to contain data and information on remote grids' generation rate impacts

The resolution is scheduled to be voted on at the Commission's March 21, 2024, meeting.



Energy Efficiency/San Diego Regional Energy Network (SDREN)

The *Motion of San Diego Community Power on Behalf of the San Diego Regional Energy Network for Approval of Energy Efficiency Portfolio Application* (“SDREN Motion”) was submitted on January 5, 2024. Responses to the SDREN Motion were submitted on February 5, 2024, and are summarized in Item 9 of the [February 22, 2024, Board of Directors agenda packet](#). SDCP, on behalf of SDREN, submitted reply comments to the responses on February 15, 2024.

Reply comments focused on addressing the major arguments raised by parties in the Motion responses, with an overall ask that the CPUC expediently approve the SDREN Motion. To that end, SDCP asked that SDG&E’s intent to withdraw from energy efficiency program administration be deliberated separately from the SDREN Motion given the distinct and separate scope of issues associated with SDG&E’s intent to withdraw. The remainder of SDCP’s reply comments addressed mischaracterizations presented by the Public Advocates’ Office (PAO) response which asked the CPUC to reduce the SDREN portfolio budget and eliminate certain proposed programs. Threshold arguments that PAO made to justify their requests and SDCP’s responses are provided below:

PAO Argument	SDCP Response
The SDREN portfolio programs duplicate and overlap with existing offerings provided by SDG&E.	SDREN and SDG&E met regularly during the portfolio development process to ensure program coordination and non-duplication. SDG&E supports this in their response.
SDREN portfolio programs do not align with Commission policy and guidance.	SDCP references existing Commission guidance and policy that pertain to its portfolio to demonstrate alignment.
SDREN’s portfolio needs to prioritize decarbonization.	SDCP references portions of its business plan that describe its plans to integrate decarbonization.

Currently, SDCP and the County of San Diego are meeting with CPUC Commissioners’ offices to educate and advocate for approval of the SDREN Motion.

The anticipated next steps in the CPUC’s REN approval process – subject to change at the CPUC’s discretion - include:

1. Ruling Seeking [Additional] Comment on the SDREN Business Plan
2. Opening Comments on Ruling
3. Reply Comments
4. Proposed Decision
5. Opening Comments on Proposed Decision



6. Reply Comments on Proposed Decision
7. CPUC Votes on Decision [to Authorize SDREN]

The CPUC has not provided dates or deadlines for these upcoming milestones. Assuming the SDREN Motion deliberation timeline mirrors that of similar Motions deliberated previously, the CPUC should have a final decision issued by the end of the year 2024. Staff will continue to provide updates as the SDREN moves through the CPUC regulatory process.

Green Access Programs

Background

On May 31, 2022, the three major investor-owned utilities (IOUs) each filed an application for review of the Green Access Program (GAP) tariffs, which was consolidated into one proceeding ([A.22-05-022](#)). The GAP tariffs include the Green Tariff Shared Renewables (GTSR), Disadvantaged Communities Green Tariff (DAC-GT), and Community Solar Green Tariff (CSGT). Subsequently, Assembly Bill 2316 (Ward, 2022) directed the CPUC to evaluate existing community solar programs and determine whether it would be beneficial to establish a new community renewable energy program. On December 2, 2022, the assigned Commissioner for the GAP proceeding issued a Scoping Memo and Ruling requesting party evaluation of existing programs and proposals for revised and new programs.

SDCP was approved by the CPUC to administer the DAC-GT and CSGT programs for its customers on March 20, 2023, and therefore has a vested interest in the future of the programs, which promote the development of community-scale renewable energy projects and provide a 20% bill discount to participating low-income customers. As such, SDCP has been active in the proceeding and working with a group of CCAs (Joint CCAs) that also administer both programs. The Joint CCAs filed several sets of briefs and comments to demonstrate the value of the programs as well as recommend modifications.

Proposed Decision

On March 5, 2024, the CPUC issued a [Proposed Decision](#) that evaluates and modifies the current GAP tariffs as well as adopts a new community renewable energy program. A high-level summary of the Proposed Decision is outlined below:

- Evaluation and Modification of Existing GAP Tariffs
 - The Commission found that the current GAP tariff options do not meet all the evaluation goals described in AB 2316.



- The Proposed Decision consolidates the current CSGT and DAC-GT programs by discontinuing CSGT and transferring the remaining program capacity to a modified DAC-GT program.
 - Under this change, SDCP will have 20.16MW of total capacity under the modified DAC-GT program.
- Modifications to the DAC-GT program include but are not limited to:
 - Expands DAC-GT site requirement from within a DAC to no more than 5 miles from DACs
 - Updates the project cost containment cap
 - Revises the submission date of the DAC-GT annual budget advice letter from February 1 to April 1
 - Decreases DAC-GT program solicitations to a minimum of once a year
 - Allows the voluntary inclusion of storage in solicitations
 - Increases the DAC-GT capacity cap of each program administrator that is close to being fully procured
- The Proposed Decision allows SDG&E to terminate its DACT-GT and CSGT programs but requires continued coordination with participating CCAs.
- Adoption of a New Community Renewable Energy Program
 - The Commission concluded that that it is beneficial to ratepayers to adopt a community renewable energy program.
 - However, the Proposed Decision rejected the Net Value Billing Tariff (NVBT) proposed by the Coalition for Community Solar Access (CCSA), which was a focus of much of the proceeding.
 - The Commission concludes that the NVBT proposals do not equate to retail rate programs but instead resemble wholesale electricity procurement, and therefore is not exempt from the Public Utility Regulatory Policies Act (PURPA).
 - The Commission finds that the NVBT proposals do not meet the requirements of AB 2316 to minimize impacts to nonparticipating customers by prohibiting the program's costs from being paid by nonparticipating customers in excess of avoided costs.
 - Instead, the Proposed Decision adopts a new community renewable energy program by layering a customer subscription model and a non-ratepayer-funded adder onto an existing PURPA-compliant tariff such as the Renewable Market Adjusting Tariff (ReMAT) or Standard-Offer-Contract.
 - Customers subscribe to the program and receive a flat monetary credit on their monthly bill based on a percentage of each project's overall revenue share (no less than 20% for low-income customers).



- The Proposed Decision adopts \$33 million appropriated to the Commission for community solar usage as an adder available to low-income households.
- The Proposed Decision notes that the new program should also take advantage of state and federal funds and incentives, including AB 102, the U.S. Environmental Protection Agency's (EPA) Solar for All program, and the enhanced federal Investment Tax Credit (ITC).

Next Steps

SDCP is working with the Joint CCAs to prepare opening and reply comments on the Proposed Decision, which are due March 25 and April 5, 2024, respectively. SDCP also plans to file separate comments on issues specific to SDG&E's service territory. The earliest the CPUC can vote on a Final Decision is April 18, 2024.

Provider of Last Resort (POLR)

On March 14, 2024 the CPUC issued a [Proposed Decision](#) on Provider of Last Resort (POLR) policies, Financial Security Requirement (FSR) updates, a new financial monitoring process, and modifications to rules regarding CCA and energy service provider (ESP) registration and deregistration. These changes are intended to ensure POLR cost recovery and compliance with SB 520 (Stats. 2019, Ch. 408), promote continuity of electric service, and prevent cost shifts between customers during a mass involuntary return of CCA or ESP customers to POLR service.

Notable to SDCP, are the proposed modifications to the FSR, which is the instrument for covering costs stemming from a mass involuntary return to IOU service that can take the form of a surety bond, letter of credit, or cash held by a third party. The current FSR and re-entry fee calculations are based on the following methodology:

$$\text{FSR Re-Entry Fee} = (\text{Incremental Procurement Costs} + \text{Administrative Costs}) - \text{Revenues.}$$

The Proposed Decision makes several modifications to this calculation.

Changes to the current CCA FSR calculation include:

- Use the Commission's annual RA Market Price Benchmarks, as adopted in the Power Charge Indifference Adjustment (PCIA) proceeding, to forecast the costs of system and flexible RA. Currently, the FSR calculation uses



Resource Adequacy (RA) proxy costs from the Energy Division's most recent RA Report, which presents historical RA price information.

- Use the IOU POLR's system average residential and nonresidential customers generation rates to better forecast the IOU's generation revenues associated with each CCA. Currently, the revenue offset of the FSR is calculated using the IOU's system average rates.
- Account for the CCA customers' allocation of RA from the IOU POLR's Cost Allocation Mechanism (CAM) and Demand Response (DR) Resources, provided that the Commission prospectively guarantees that CAM and DR RA will be promptly and actually reallocated to the POLR during a mass involuntary return.

Changes to the revenue component of the FSR and re-entry fee calculations include:

- Revenues from PCIA rates of CCA customers must be removed from the IOU POLR's generation revenues.
- The IOUs as POLR must incorporate Commission-approved generation rate changes that will go into effect during the forward period if they are known at the time of the FSR or re-entry fee calculation.
- Generation rates will be differentiated by season.

Moreover, the Proposed Decision revises the minimum FSR amount to be the greater of two viability amounts: the current \$147,000 amount or the calculated per-customer administrative fee (which for SDCP, would be approximately \$0.50 per customer account).

The Proposed Decision also adopts a two-tiered reporting structure for monitoring the financial status of CCAs. Under the first tier, all CCAs, regardless of their financial standing or years of operation, shall be required to provide CPUC Energy Division a copy of their most recent audited financial information twice per year. A second tier is triggered by a CCA meeting one of five financial indicators and would result in heightened reporting to CPUC Energy Division.

SDCP is analyzing the implications of the Proposed Decision and is working with CalCCA to file comments, due April 3, 2024, and reply comments, due April 8, 2024. The Proposed Decision may be heard as early as the April 18, 2024, Commission meeting.

B) State Legislative Activities Update

Senate and Assembly Energy Committees both hold hearings on affordability issues.



The affordability of energy bills is the predominant energy policy discussion in Sacramento at the outset of the 2024 legislative year. The Senate Energy, Utilities and Communications Committee held a hearing on February 13, 2024, titled “Keeping the Focus on Utility Bill Affordability” and the Assembly Utilities & Energy Committee held a hearing on March 6 titled “Affordability Concerns in the Electric Sector: Current Cost Drivers and Implications for Future Trends.” Here are some themes that stick out from the hearings:

- **Legislators are hearing from constituents regularly about the issue.** Affordability of energy bills is the number one thing legislators are receiving calls from constituents about. Calls from constituents are propelled by recent rate increases approved by the CPUC – rates are far outpacing inflation and PG&E customer bills will go up by \$50 in 2024 alone – and constituents are also concerned about the potential for the CPUC to approve an income-graduated fixed charge as authorized by AB 205 (2022). Additionally, the Public Advocates Office reported that 21% of customers – over 2.4 million statewide – are behind on their bills.
- **Growing concerns about affordability could impact climate goals.** Californians may be reluctant to switch fuels if utility costs are unaffordable, thereby potentially slowing progress towards the state’s climate goals.
- **Key cost drivers are largely on the IOU side of the bill.** Some of the key cost drivers identified in the hearings are wildfire mitigation investments, costs of solar rate structures, non-wildfire transmission & distribution investments, and public purpose programs. There was not a lot of focus on the cost impacts of generation procurement.
- **There are lots of solutions being discussed, but it’s not clear what, if any, solutions could feasibly be acted on.** Some of the ideas discussed in the hearings are:
 - An income graduated fixed charge, which is being considered by the CPUC, may help stabilize bills and reduce costs for low-income customers.
 - Improve oversight of balancing and memorandum accounts. While the CPUC approved costs through a General Rate Case (GRC), the IOUs also use various balancing and memorandum accounts that accumulate costs assigned to ratepayers. These accounts are outside of the GRC and receive less scrutiny.
 - Examine why ratepayers are still paying for programs that have been determined to not be cost-effective.
 - Look for opportunities for alternative funding or financing sources.

SDCP is tracking and reviewing over 150 new pieces of legislation.

SDCP staff is in the process of assessing the introduced proposals and is working with internal subject matter experts and CalCCA to identify top priority bills. Here are some key areas of particular interest:



- There are 38 bills potentially impacting SDCP program activities, for example on zero-emission vehicles or distributed energy resources.
- There are 25 bills potentially impacting power services, procurement, and related utility infrastructure, but none appear to propose a procurement mandate (one bill, SB 1305 by Senator Stern, would impose a procurement mandate, however, SDCP staff expects the procurement mandate to be removed from the bill).
- There are 17 bills dealing with affordability, including four on income graduated fixed charges.

Brown Act Legislation Could Benefit the CAC

AB 817 (Pacheco) is making its way through the Legislature. Sponsored by the League of California Cities, it would modify certain remote meeting rules under the Brown Act through January 1, 2026 for "subsidiary bodies" like the Community Advisory Committee (CAC) that are advisory in nature. In doing so, the bill would help the CAC conduct its business in a manner that provides flexibility to CAC members to attend meetings in balance with their professional and personal lives. The flexibility could help the CAC attract and retain members.

Specifically, AB 817 (Pacheco) defines a subsidiary body as one that serves exclusively in an advisory capacity and is not authorized to take final action on matters. The bill authorizes the governing legislative body of a subsidiary body - SDCP's Board - to make findings every 12 months so the subsidiary body can take advantage of the bill's remote meeting process. If findings are made, subsidiary bodies like the CAC would not need to post an agenda at each teleconference location, would not need to make each teleconference location accessible to the public, and would not need a quorum within SDCP's area. Subsidiary bodies would need to use a two-way audio-visual platform (i.e. Zoom) and would have to follow other specified requirements for remote meetings, such as agenda notification requirements, event disruption guidelines, and rules governing public comment. There would be no limitation on how many times a CAC member could participate in a meeting remotely.

Consistent with a proposed amendment to SDCP's Legislative & Regulatory Policy Platform, SDCP staff is considering adopting a support position on the bill.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER

Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Chandra Pugh, Director of People Operations

Via: Karin Burns, Chief Executive Officer

Subject: Approve Election to Participate in State Disability Insurance

Date: March 28, 2024

RECOMMENDATION

Approve the proposed election to participate in the State Disability Insurance program for all present and future eligible SDCP employees.

BACKGROUND

The California Employment Development allows public agencies to participate in State Disability Insurance (SDI) for all its employees through a motion made by the agency's governing board electing to participate in SDI. San Diego Community Power (SDCP) strives to provide affordable options for employees who may suffer a debilitating medical condition that prevents them from working. SDCP is applying for SDI to provide partial wage replacement for employees unable to work due to a non-work-related illness, injury, or pregnancy. The organization currently provides short term disability through a private insurance carrier however, adding SDI will allow employees to further replace lost wages and will provide additional assistance should they leave SDCP in the future and face a non-work-related injury or illness. Employees were notified of this update during an all staff meeting in October 2023.

ANALYSIS AND DISCUSSION

SDCP must commit to participate in the SDI program for at least two calendar years and then may elect to terminate participation. Rates for participation are established for each year. On or before October 31 of each year, the EDD will notify all employers of the SDI rate for the next year. Employee contributions to SDI are currently expected to be taxed at 1.1% per payroll cycle. Effective January 1, 2024, there is no longer a wage limit cap in California. We anticipate coverage to begin in July of this year.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

The SDI program is funded through employee payroll deductions.

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Emily Fisher, Senior Program Manager
Colin Santulli, Director of Programs

Via: Jack Clark, Chief Operating Officer

Subject: Update on Residential Solar and Storage Program

Date: March 28, 2024

RECOMMENDATION

Receive and file the update on SDCP's residential solar and storage program.

BACKGROUND

SDCP's Net Billing Tariff ("NBT") was approved at the October 2023 Board of Directors ("Board") [meeting](#). NBT reduces the value for excess solar generation for most of the year but strongly supports adding a battery to store excess solar and dispatch during on-peak periods when rates are much higher. To support continued adoption of solar and battery energy storage systems, Staff committed to develop a solar and storage program for SDCP customers. This item is an update on the status of the solar and storage program development.

ANALYSIS AND DISCUSSION

Goals

The goals of the solar and storage program are to:

1. Support solar and storage installations in residential single-family homes throughout SDCP's service territory.
2. Support clean energy and reliability by leveraging batteries on a daily basis during peak periods.
3. Leverage non-SDCP incentives to support customers in overcoming system costs.
4. Build strong relationships with the industry and SDCP customers.

Stakeholder Engagement

Over the last six months, Staff have been researching existing utility programs, and engaging with a wide range of stakeholders, including installers, solar/storage providers, aggregators and battery manufacturers on the program design options. Staff compiled an inventory of related programs and interviewed program implementers/funding agencies to understand the latest program designs and best practices to adopt for SDCP's needs.

In December 2023, Staff presented initial program concepts to the standing CAC Programs Ad Hoc Committee. In January 2024, Staff held two industry workshops to present initial program concepts. The 72 attendees at the two virtual workshops included installers, aggregators, providers, and battery manufacturers. Overall, the industry responded positively to the program. In February 2024, Staff presented to the CAC.

Based on feedback collected to date and research on other related existing solar and storage incentive programs, Staff have developed a program design that includes a one-time, upfront incentive and an annual performance incentive. Staff has received valuable feedback from industry and other stakeholders on program design elements outlined below including customer eligibility, incentive levels, installer requirements, battery requirements and the application process.

Customer Eligibility

Proposed program eligibility include:

- Must be an active SDCP residential customer.
- Systems must be properly permitted and interconnected.
- Battery must be charged completely by on-site solar.
- Battery cannot simultaneously be participating (or enrolling) in any other programs (e.g., demand response or virtual power plant programs).
- Only new battery systems are eligible (SDCP application must be submitted before system is installed).

This program may target Net Energy Metering (“NEM”) 2.0 customers grandfathering in a battery storage system, NEM 2.0 customers adding additional solar and/or storage and therefore transitioning to NBT, or new customers who are installing solar and storage under NBT.

Proposed Incentives

SDCP is proposing an upfront incentive to support customers in overcoming higher system costs as well as performance incentives to motivate customers to dispatch their batteries daily and reduce overall peak demand to support grid reliability. Below are the proposed incentives.

Incentives	Market Rate	CARE/FERA ¹ & Communities of Concern
Solar Upfront Incentive	N/A	\$450/kW-AC ²
Storage Upfront Incentive	\$350/kWh Useable nameplate capacity	Up to \$500/kWh ³ Useable nameplate capacity
Storage Performance Incentive	\$0.10/kWh Based on actual performance over 2-hour period during daily on-peak periods	

¹ California Alternate Rates for Energy (“CARE”) and Family Electric Rate Assistance Program (“FERA”)

² Based on if customer is eligible for other solar incentives, e.g., Self-Generation Incentive Program (“SGIP”), Disadvantaged Communities–Single-Family Affordable Solar Homes (“DAC-SASH”) and City of San Diego Equity Program

³ Up to based on if customer is eligible for other upfront storage incentives, e.g., SGIP”

The upfront incentive would be a one-time payment based on the product datasheet's nameplate useable capacity (kWh). The payment will be processed after the system has received permission to operate ("PTO") and paid to the appropriate party (e.g., installer, provider, battery manufacturer, customer) based on the selected payee from the application and will be processed within 30 days of SDCP receiving the PTO letter. Staff is considering the inclusion of a prorated claw back if a customer unenrolls.,

The performance incentive would be based on actual battery data from the inverter. SDCP will allow for the customer to enroll different capacities between the summer and winter season, with a minimum of 50% of the battery's capacity participating. A preset schedule will be provided to the battery manufacturers for the same two-hour period each month (e.g., January may require a dispatch from 6-8 PM every day while February may require a dispatch from 7-9 PM). Batteries will be expected to perform at 80% or more of the enrolled capacity each month. If it underperforms by over 20%, the customer will forfeit their incentive for that month. The performance incentive will be paid annually, lasting 10 years.

Proposed Contractor Requirements

SDCP will require approved contractors to complete an application to ensure they have local installers, have at least three years of experience with solar and battery installs, have the appropriate licensing in place, with agreeing to the program requirements. Once the application is submitted and approved, SDCP expects to have an online training requirement for contractors (i.e., installer and solar/storage providers) to ensure clear communication of the program. Once that is complete, a contractor will receive authentication and can start submitting applications.

Proposed Battery Requirements

SDCP is proposing to only allow incentives for approved battery products. Battery manufacturers would submit an agreement to SDCP ensuring they can operationalize the program and agree to the program terms. Part of that agreement will entail the battery manufacturer is able to provide SDCP with an ability to collect the battery performance data—either through access to a platform where SDCP can pull the data directly or sharing it through a CSV template. Additionally, batteries must meet the following requirements:

- Have single cycle round-trip efficiency of 80% or greater.
- Battery storage system must be UL1973 and UL9540 tested and certified.
- Battery inverters associated with battery storage shall be UL1741 and UL1741 Supplement A tested and certified.
- Battery storage system must have a 10-year warranty or greater.

Application and Installation Process

The proposed application flow includes the following steps:

- 1) Once a customer is interested in the program (interest can be obtained by direct contact with an SDCP representative, seeing an advertisement and viewing the SDCP webpage and connecting with a contractor, or having a contractor that has introduced the program to them or many other ways), customer will connect with their selected contractor.



- 2) Contractor will check customer eligibility with account number via a GIS webpage to ensure they are an SDCP customer. Additionally, they can use the GIS webpage to check if they are within a Community of Concern to see if they are eligible for the higher incentive and review the customer bill to see if they are on CARE/FERA and eligible for the higher (\$500/kWh) upfront incentive.
- 3) After a customer is confirmed eligible, the contractor will develop the proposal for the customer based on their needs and include the SDCP enrollment document (application and T&Cs) within the customer contract.
- 4) The customer will sign the contract and the contractor will share the SDCP enrollment application along with the customer contract to SDCP.
- 5) SDCP will review the submitted enrollment application within 10 business days (or less) of submittal and notify the customer and contractor of approval. If the customer isn't approved, SDCP will notify them of why and they can resubmit at a later date if something changes.
- 6) From there, the contractor can continue with the interconnection application, permitting, procuring materials, and scheduling the installation.
- 7) Once the installation is complete, the contractor will submit the PTO letter to SDCP.
- 8) SDCP Programs will receive the PTO letter and calculate the annual performance incentive. SDCP Finance will process the payments within 30 days after PTO to the appropriate payee.
- 9) Once the PTO letter is submitted, SDCP will also notify the battery manufacturer that the customer is online and participating in the program. SDCP will have the manufacturer ensure the program is operationalized on their end.
- 10) The battery manufacturer will submit the battery data quarterly and SDCP will perform the incentive calculation and notify the customer of the cumulative incentive amounts each quarter. The performance payment will be paid annually for 10 years at the end of each calendar year and paid to the customer.

SDCP will provide marketing materials to sales staff, installers, and providers to share with customers to ensure proper, clear communication of program messaging.

Example Customers

Below shows two examples of customers: (1) Market Rate and (2) CARE, FERA and/or Community of Concern customer. The example shows average pricing for an average system size and how the incentives will impact the customer's overall out-of-pocket costs.



	Market Rate		CARE/FERA & Communities of Concern	
	Solar	Storage	Solar	Storage
Implementation Costs				
System Size	7.3 kW-AC	6.8 kW / 13.6 kWh	7.3 kW-AC	6.8 kW / 13.6 kWh
Implementation Costs	\$25,550	\$18,224	\$25,550	\$18,224
Unit Cost	\$3,500/kW	\$1,340/kWh	\$3,500/kW	\$1,340/kWh
Total Cost	\$43,774		\$43,774	
Incentives				
ITC (30%)	(\$7,665)	(\$5,467)	(\$0)	(\$0)
SGIP	(\$0)	(\$0)	(\$22,630)	(\$14,960)
SGIP Incentive Value	\$0/kW	\$0/kWh	\$3,100/kW	\$1,100/kWh
SDCP Upfront Incentive	(\$0)	(\$3,850)	(\$2,920)	(\$3,264)
Incentive value	\$0/kW	\$350/kWh	\$450/kW-AC	\$500/kWh
SDCP Performance Incentive (10-yr)	(\$0)	(\$2,200)	(\$0)	(\$2,920)
Incentive value	\$0/kW	\$0.10/kWh	\$0/kW	\$0.10/kWh
Remaining Out of Pocket Costs				
Remaining Out-of-Pocket	\$24,592 (56% of Total Cost)		(\$2,920)	
Assumptions:	<ul style="list-style-type: none">Avg. System SizesFully leverage ITC60% battery participation		<ul style="list-style-type: none">Avg. System SizesUnable to leverage ITCEligible for SGIP80% battery participation	

Next Steps

Staff are finalizing the program details and expect to release the installer application and battery manufacturer agreement in early April to start registering industry participants. Staff expect to open the program application in late Q2.

FISCAL IMPACT

The program budget as currently envisioned is comprised of funding from both the Programs and Power Services Department budgets. The Power Services Department budget spending is cost neutral (i.e., funds do not have a net impact on SDCP's budget, it's a reallocation of budget spend).

Upfront, Programs Budget. The \$500K tranche of funding for the upfront incentive, serving approximately 200 - 250 participants, is expected to come from the Program Department's Pilot Program budget. The Programs team will seek an additional \$6M in the FY24-25 budget cycle to continue to fund the program. This funding could support up to another 2,000 – 2,500 participants.

Upfront, Power Budget. The Power Services Department will see savings from Resource Adequacy ("RA"). The savings resulting from the reduced RA obligation will be reallocated to support the upfront incentive budget. RA related savings will be accounted for in the year-ahead load forecasting process and the resulting 5-year impacts will be tracked to ensure alignment with expected program performance.

Incentive	Departmental Budget	Initial Budget	FY 24-25
Upfront	Programs	\$0.5M	\$6.0M
	Power – RA Savings	\$0.4M	\$4.6M
Total Upfront Incentive Budget		\$0.9M	\$10.6M
(57% Cost Neutral)			

Performance, Power Budget. Funding for the performance incentive will come from the Power Services Department budget, with \$0.10/kWh being a reasonable payment for the capacity being dispatched. This is equivalent of a reallocated procurement expense. The initial budget for the performance payment is expected to be approximately \$400K. Dispatch strategies may vary depending on program needs and customer preference, leading to variation in budget but remaining cost neutral.

Incentive	Departmental Budget	Initial Budget	FY 24-25
Performance	Power	\$0.4M	\$5.3M
(100% Cost Neutral)			

The total funding for a given project will be approximately 62% cost neutral.

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Amendments to SDCP Regulatory and Legislative Policy Platform

Date: March 28, 2024

RECOMMENDATIONS

Review and approve the proposed amendments to SDCP's Regulatory and Legislative Policy Platform.

BACKGROUND

San Diego Community Power's (SDCP) Regulatory and Legislative Platform (Platform) serves as a guide to the SDCP Board of Directors, SDCP staff, and SDCP advocates in their efforts and engagement on policy matters of interest to SDCP. The Platform allows both Board members and staff to pursue actions at the local, regional, state, and federal legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers. The Platform enables the organization to move swiftly to respond to issues before Legislature and Executive Branch agencies including the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), California Independent System Operator (CAISO), the California Air Resources Board (CARB), and others, so that SDCP's views can be heard on important matters in a timely fashion. The Platform provides guidance to the Chief Executive Officer on positions that should be taken on legislative matters identified by the SDCP Director of Regulatory and Legislative Affairs and the California Community Choice Association (CalCCA) Board of Directors.

ANALYSIS AND DISCUSSION

The Platform was originally approved by the Board on March 24, 2022 and was last amended by the Board on February 23, 2023 to reflect recent federal legislation and changes to the Resource Adequacy policy area, to add language on a just transition for workers in the clean energy economy, on financial stability for CCAs, to express support for expediting permitting processes, to support efforts relative to energy education and

services in multiple languages, and to add a section on Rate Affordability and Modernization.

The Platform is now being amended in two main ways. First, to support SDCP's engagement on legislative and regulatory efforts regarding regional grid developments, a key policy debate currently occurring through a regional stakeholder process and in the State Legislature. Key regional grid issues were outlined in a staff report and presentation during the February 22 Board meeting (Item 19). Specifically, Section X (10) of the Platform is proposed to be amended to include language on the development of regional market structures that enhance the ability of SDCP to meet its' renewable energy goals reliably and cost-effectively. A key focus of the new Platform language is that customer benefit should be paramount, with a focus on resource cost savings for SDCP customers. The Platform amendment also ensures that any state policies governing regional grid development maintain SDCP's commitment to workforce and local project development, as well as protect clean energy jobs in California.

Second, the Platform is being amended to reflect support for legislative efforts that better facilitate Board member and Community Advisory Committee (CAC) member participation in SDCP's governance and decision-making. The COVID pandemic caused the Legislature to re-evaluate how local public meetings are held by changing the Brown Act. The Act was recently amended to allow local legislative bodies to hold remote or hybrid meetings without needing to adhere to strict agenda posting requirements under emergency circumstances or when there is a just cause, such as lack of childcare. Last year, SDCP supported two pieces of legislation to further modify the Brown Act to facilitate transparent and accessible remote meetings. One of those bills, SB 411 (Portantino), was signed into law and created remote meeting rules for neighborhood councils in the City of Los Angeles. This year, SDCP has the opportunity to support AB 817 (Pacheco), which would create more reasonable remote meeting procedures for advisory bodies, like the CAC. Amending the Platform will allow SDCP staff to engage on these bills without needing to seek Board approval each time the Legislature contemplates the subject.

There are also two clarifying amendments on SDCP's support for deep decarbonization and transportation electrification efforts, as well as technical and conforming changes identified by staff and the CAC.

Attached to this staff report is a redline version reflecting these changes as well as a clean version with the changes incorporated.

COMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Redline changes



Attachment B: Clean changes





San Diego Community Power Regulatory & Legislative Platform

DRAFT AMENDMENTS (March, 28, 2024 Board Meeting)

Overview and Purpose

San Diego Community Power's (SDCP) Regulatory & Legislative Platform (Platform) serves as a guide to the SDCP Board of Directors, SDCP staff, and SDCP advocates in their efforts and engagement on policy matters of interest to SDCP. The Platform allows both Board members and staff to pursue actions at the local, regional, state, and federal legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers. The Platform enables the organization to move swiftly to respond to issues before Legislature and Executive Branch agencies including, but not limited to, the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), California Independent System Operator (CAISO), and the California Air Resources Board (CARB) so that SDCP's views can be heard on important matters in a timely fashion. This Platform ~~is applicable~~applies, but is not limited to, statewide referenda, grant funding opportunities, and local ballot initiatives. The Platform is also applicable to opportunities arising out of recent federal legislation, including the Inflation Reduction Act as well as the Infrastructure Investment and Jobs Act. The Platform provides guidance to the Chief Executive Officer or their designee on ~~support or oppose~~ positions that should be taken on legislative matters identified by the SDCP Director of Regulatory and Legislative Affairs or their designee and the California Community Choice Association (CalCCA) Board of Directors.

The Platform outlines the legislative and regulatory priorities and stances of SDCP with the intent to inform customers, stakeholders, representatives, and policymakers on the myriad of public policies that intersect with SDCP's priorities, programs, and services.

SDCP has three major policy priorities:

1. Accelerating Deep Decarbonization, Equitably and Expeditiously
2. Promoting Local Development, and
3. Stabilizing Community Choice Energy.

SDCP support of policies will be contingent upon that legislation or regulation adhering to these priorities as well as SDCP's organizational goals and priorities. Moreover, SDCP supports any and all policies that will preserve or enhance the ability of SDCP to promote these priorities at the local level.

Any questions regarding this Platform can be directed to Laura Fernandez, Director of Regulatory and Legislative Affairs, at lfernandez@sdcommunitypower.org.

General Policy Principles

SDCP has three general policy principles. These priorities serve as the foundation for all actions SDCP will take, including the lobbying and public comment for policies that promote those same guiding priorities. Public policy encompasses a myriad of subject and topic areas. However, as these policies intersect at the local level, they have the ability to impact SDCP revenues, programs, operations, and/or administrative discretion

Adopted on March 24, 2022. Amended on November 17, 2022 and February 23, 2023



and control. SDCP will support policies that accelerate deep decarbonization, promote local development, stabilize community choice, or any combination thereof. If a given policy does not meet these criteria, SDCP will oppose, support with amendments, adopt a neutral position, or in some cases take no stance on that policy or legislation. The General Policy Principles for SDCP are:

Accelerating Deep Decarbonization

- Support the creation or expansion of federal, state, and local policies, programs and funding that enable SDCP to provide 100% renewable energy by 2035 or sooner to customers within its service area as well as contribute to the State's efforts to reduce greenhouse gas emissions, including through building electrification and transportation electrification.
- Oppose any legislation, policies, programs, referenda, initiatives, unfunded mandates and budgets that would have an adverse impact on SDCP's ability to advance decarbonization through its procurement, programs, projects, and services.

Promoting Local Development

- Support any legislation, policy, funding, referenda, and budgets that enhance community choice energy providers' ability to invest in local clean energy, including infill solar and battery storage, as well as other distributed energy resources, grid resiliency, zero-emission transportation, all while promoting equity in the communities that it serves.
- Oppose any legislation, policy, funding, referenda, initiatives and budgets that limit or undermine SDCP's ability to invest in local clean energy, distributed energy resources, zero-emission transportation, all while promoting equity in the communities that it serves.

Stabilizing Community Choice

- Support any legislation, policies, funding, referenda, initiatives and budgets that maintain or improve the stability of community choice energy providers by ensuring regulatory structure is equitable and enables Community Choice Aggregators (CCAs) to meet their mission and goals. Maintaining local decision-making authority, including rate-setting authority and procurement of energy, as well as program design and administration, is a key pillar for this stability.
- Oppose any legislation, policies, funding, referenda, and budgets that undermine or circumvent CCAs and impede the ability of SDCP to achieve its mission and goals or its value proposition.

The list of policy positions below is by no means exhaustive. In addition to the general policy principles detailed above, SDCP takes the following more specific public policy positions:



I. Governance and Authority

- a. Oppose legislation and regulation that limits the local decision-making authority for CCAs, including rate-setting authority and procurement of energy and capacity to serve their customers.
- b. Oppose legislation and regulation that limits SDCP's ability to effectively serve its customers.
- c. Support legislation and regulations that makes it easier for other cities and counties that are not served by a publicly owned utility to form a CCA, become members of SDCP or other CCAs, and oppose legislation and regulation that restricts that ability.
- d. Support, as appropriate, legislation that facilitates public and board member participation in SDCP's governance and decision-making, including through the Community Advisory Committee, while maintaining a high standard of transparency.

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II. Deep Decarbonization

- a. Advocate for and support legislative and regulatory efforts to accelerate deep decarbonization of the energy sector, transportation and the built environment, including expanding access to low-cost financing for clean energy technologies.
- b. Advocate for and support legislative and regulatory efforts to support and expand access to transportation and building electrification.
- c. Advocate for and support policy efforts to ensure flexibility in program design so that local data and local needs directly inform program offerings.
- d. Support state funding for electric vehicle infrastructure programs, including related electric vehicle grid connected programs and policies.
- e. Advocate for and support legislative and regulatory efforts to provide incentives to support Ceommunities of Ceoncern achieving deep decarbonization.

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III. Environmental Justice

- a. Support legislation and regulation that supports the ability of Ceommunities of Ceoncern in the SDCP service area to have affordable, reliable and local clean energy.
- b. Support legislation and regulation that strengthens the resilience of vulnerable communities to the impacts of climate change.
- c. Support legislation and regulation that enables all communities, including emerging and historically marginalized communities in California, to participate in deep decarbonization efforts.
- d. Support legislation, regulation and policies that internalize the externalities of carbon, through true cost pricing and social cost accounting.
- e. Support legislation and initiatives that would reduce local air pollution, reduce other negative local impacts associated with energy production, and boost adoption of distributed energy resources within Ceommunities of Ceoncern.
- f. Oppose legislation and initiatives-regulations that have the potential to disproportionately and negatively impact communities of concern.

IV. Environmental Sustainability

- a. Support legislation and initiatives that increase funding for the creation of

Adopted on March 24, 2022. Amended on November 17, 2022 and February 23, 2023



sustainable and stable energy supply infrastructure.

- b. Support legislation and initiatives that encourage the conservation of energy resources as well as the development of dynamic load-shifting capabilities.
- c. Support legislation, regulation, and funding for renewable and advanced energy technology that increases s efficient consumption.
- d. Support legislation and funding for pilot energy and resource efficiency programs.
- e. Support legislation and initiatives with the goal of reducing and mitigating the effects of climate change and building local resiliency.

V. Investor-Owned Utility (IOU) Charges and Exit Fees - Power Charge Indifference Adjustment (PCIA)

- a. Support efforts that seek to eliminate exit fees including the PCIA or wind down exit fees within a reasonable time frame.
- b. Support efforts to minimize the cost of the PCIA generally and minimize its impact on SDCP's rates.
- c. Support ~~CalCCA~~ efforts to increase the transparency of IOU electricity contracts that provide the basis for PCIA charges.
- d. Support legislation and regulation that would bring stability to the PCIA and/or provide new mechanisms for CCAs to securitize PCIA charges.
- e. Support legislation and regulation that advances ratepayer equity.
- f. Oppose legislation and regulation that would increase or expand exit fees on CCA customers.

VI. Resource Adequacy

- a. Support legislation and regulation to address shortfalls in the Resource Adequacy market including transmission constraints, interconnection or project delays, and minimizing market power.
- b. Oppose legislation and regulation that would supplant CCAs' procurement authority for Resource Adequacy or impose compliance penalties not grounded in market realities.
- c. Support reform of the CPUC Resource Adequacy program to allow for stability in the resource adequacy value of existing resources and allow for departing load to access existing resources at fair market value.
- d. Advocate for and support efforts to remove barriers to demand response, microgrids and behind the meter resources to provide Resource Adequacy.

VII. Nonbypassable Charges

- a. Oppose legislation and regulation that restricts or limits SDCP's ability to procure its own energy products to meet state policy goals.
- b. Support legislation that promotes a level playing field between CCAs and other market participants.
- c. Support legislation that enhances the flexibility of CCA programs to support statewide procurement policy and develop and expand programs, local options, and rate design to support SDCP's community and customers.

VIII. Community Resilience

- a. Advocate for and support funding for programs implemented by CCAs and their member jurisdictions to increase community



resilience to wildfires, public safety power shutoff (PSPS) events and other potential service disruptions.

a-b. Support legislation and regulation that reduces barriers to microgrid and other distributed energy resource development by CCAs.

b-c. Oppose legislation and regulation that would enable IOUs to be the only developer of microgrids and other distributed energy resources.

e-d. Support legislation and regulation that increases development of community-level resources and distributed energy resources that increase resilience and reduce the need for new transmission and distribution infrastructure.

IX. Local Economic Development

- a. Support legislation and regulation that is consistent with SDCP's commitment to an inclusive and sustainable workforce.
- b. Support legislation and regulation that enhances opportunities for CCAs to promote local economic development through locally designed programs that meet the unique needs of their member agencies, communities, and customers.
- c. Support efforts to enhance development of local and regional sources of renewable energy, including supporting efforts to reform and expedite permitting processes
- d. Support policies that ensure a just transition of workers into the non-fossil fuel, clean energy economy.
- e. Support legislation and regulation that enables CCAs to collaborate with their member jurisdictions on local energy resources and projects to advance environmental objectives.
- f. Advocate for and support efforts to direct state and federal funding to CCAs to deliver local energy resources and projects, as appropriate.

X. California Energy Market Structure & Expansion

- a. Oppose legislation that expands direct access or the ability of electric service providers to selectively recruit CCA or IOU customers.
- b. Support legislation that would create renewable content and environmental standards for electric service providers to match the products offered by CCAs.
- c. Support legislation that changes California's market structures towards innovative models that reduce costs of energy service and support the expansion of carbon-free resources.
- d. Support legislation that advocates for equitable and timely data access/sharing between the IOUs, CCAs and other LSEs to support accurate and timely load forecasts, which aid in overall statewide grid reliability and resiliency efforts.
- e. Support regulatory and legislative efforts for the development of a regional market structure that enhances SDCP's mission to provide affordable renewable energy for a sustainable future for the San Diego region. This includes:
 - i. Preserving SDCP's ability to make resource choices that best serve its customers' needs, as well as state and Board adopted goals.

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- ii. Maintaining SDCP's commitment to an inclusive and sustainable workforce for the region, keeping jobs in California and preserving union work opportunities in California's energy sector.
- iii. Maintaining a transparent governance process that provides equitable representation of the interests of all market participants.
- iv. Focusing on customer benefit, with a particular focus on resource cost-savings for SDCP customers.
- v. Enhancing grid reliability in a variable generation grid while achieving clean energy goals in the quickest way possible.
- vi. Coordinating transmission planning, to the extent feasible to enhance deliverability, reduce congestion, and help cost-effectively and reliably meet renewable and clean energy goals.

d.

XI. Finance

- a. Support legislation that enhances the financial standing of CCAs and their ability to receive a positive credit rating.
- b. Oppose legislation that reduces or removes the tax-exempt status of municipal bonds.
- c. Oppose any legislation that would divert CCA revenues to the State or other governmental entities.
- d. Oppose policies that inequitably transfer risk from IOUs to CCAs, (e.g. including within the implementation of the provider of last resort framework).
- e. Oppose legislation that disrupts or impairs the ability of CCAs to maintain or achieve financial stability.

XII. Educational, Neighborhood and Social Services

- a. Support legislation and regulation that aids or helps to fund SDCP to provide energy support services, education, and opportunities for reducing energy costs to people who are low-income, seniors, veterans, and/or people with disabilities, or otherwise have historically been marginalized. Support policies and efforts to ensure that services and education are offered in languages other than English.
- b. Support legislation and initiatives-regulation that increase targeted funding for energy efficiency, demand response, solar plus storage, and transportation electrification programs, behind the meter programs, and energy literacy programs and services.
- c. Support policies-legislation and regulation that would result in improved indoor air quality. For example, policies that would require or encourage appropriate ventilation be added when efficiency improvements, such as weatherproofing, insulation and double pane windows are installed.

XIII. Rate Affordability and Modernization

- a. Support legislative and regulatory efforts to promote affordable rates for all Californians while ensuring ratepayer equity and maintaining CCA ratemaking autonomy and financial solvency.
- b. Support policies that enhance CCA timely access to quality billing data to enable demand flexibility initiatives and innovative rate design.

Adopted on March 24, 2022. Amended on November 17, 2022 and February 23, 2023

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- c. Oppose policy mandates that violate CCA ratemaking autonomy or impose fixed fees within the generation component of rates.
- d. Oppose policies that would result in increasing utility customer delivery rates rather than utilizing alternative state or federal funding to accomplish stated policy goals.



San Diego Community Power Regulatory & Legislative Platform

DRAFT AMENDMENTS (March, 28, 2024 Board Meeting)

Overview and Purpose

San Diego Community Power's (SDCP) Regulatory & Legislative Platform (Platform) serves as a guide to the SDCP Board of Directors, SDCP staff, and SDCP advocates in their efforts and engagement on policy matters of interest to SDCP. The Platform allows both Board members and staff to pursue actions at the local, regional, state, and federal legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers. The Platform enables the organization to move swiftly to respond to issues before Legislature and Executive Branch agencies including, but not limited to, the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), California Independent System Operator (CAISO), and the California Air Resources Board (CARB) so that SDCP's views can be heard on important matters in a timely fashion. This Platform applies, but is not limited to, statewide referenda, grant funding opportunities, and local ballot initiatives. The Platform is also applicable to opportunities arising out of recent federal legislation, including the Inflation Reduction Act as well as the Infrastructure Investment and Jobs Act. The Platform provides guidance to the Chief Executive Officer or their designee on positions that should be taken on legislative matters identified by the SDCP Director of Regulatory and Legislative Affairs or their designee and the California Community Choice Association (CalCCA) Board of Directors.

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Any questions regarding this Platform can be directed to Laura Fernandez, Director of Regulatory and Legislative Affairs, at lfernandez@sdcommunitypower.org.

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and control. SDCP will support policies that accelerate deep decarbonization, promote local development, stabilize community choice, or any combination thereof. If a given policy does not meet these criteria, SDCP will oppose, support with amendments, adopt a neutral position, or in some cases take no stance on that policy or legislation. The General Policy Principles for SDCP are:

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- Oppose any legislation, policies, programs, referenda, initiatives, unfunded mandates and budgets that would have an adverse impact on SDCP's ability to advance decarbonization through its procurement, programs, projects, and services.

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- c. Support legislation and regulations that makes it easier for other cities and counties that are not served by a publicly owned utility to form a CCA, become members of SDCP or other CCAs, and oppose legislation and regulation that restricts that ability.
- d. Support, as appropriate, legislation that facilitates public and board member participation in SDCP's governance and decision-making, including through the Community Advisory Committee, while maintaining a high standard of transparency.

II. Deep Decarbonization

- a. Advocate for and support legislative and regulatory efforts to accelerate deep decarbonization of the energy sector, transportation and the built environment, including expanding access to low-cost financing for clean energy technologies.
- b. Advocate for and support legislative and regulatory efforts to support and expand access to transportation and building electrification.
- c. Advocate for and support policy efforts to ensure flexibility in program design so that local data and local needs directly inform program offerings.
- d. Support state funding for electric vehicle infrastructure programs, including related electric vehicle grid connected programs and policies.
- e. Advocate for and support legislative and regulatory efforts to provide incentives to support Communities of Concern achieving deep decarbonization.

III. Environmental Justice

- a. Support legislation and regulation that supports the ability of Communities of Concern in the SDCP service area to have affordable, reliable and local clean energy.
- b. Support legislation and regulation that strengthens the resilience of vulnerable communities to the impacts of climate change.
- c. Support legislation and regulation that enables all communities, including emerging and historically marginalized communities in California, to participate in deep decarbonization efforts.
- d. Support legislation, regulation and policies that internalize the externalities of carbon, through true cost pricing and social cost accounting.
- e. Support legislation and initiatives that would reduce local air pollution, reduce other negative local impacts associated with energy production, and boost adoption of distributed energy resources within Communities of Concern.
- f. Oppose legislation and regulations that have the potential to disproportionately and negatively impact communities of concern.

IV. Environmental Sustainability

- a. Support legislation and initiatives that increase funding for the creation of sustainable and stable energy supply infrastructure.



- b. Support legislation and initiatives that encourage the conservation of energy resources as well as the development of dynamic load-shifting capabilities.
- c. Support legislation, regulation, and funding for renewable and advanced energy technology that increases efficient consumption.
- d. Support legislation and funding for pilot energy and resource efficiency programs.
- e. Support legislation and initiatives with the goal of reducing and mitigating the effects of climate change and building local resiliency.

V. Investor-Owned Utility (IOU) Charges and Exit Fees - Power Charge Indifference Adjustment (PCIA)

- a. Support efforts that seek to eliminate exit fees including the PCIA or wind down exit fees within a reasonable time frame.
- b. Support efforts to minimize the cost of the PCIA generally and minimize its impact on SDCP's rates.
- c. Support efforts to increase the transparency of IOU electricity contracts that provide the basis for PCIA charges.
- d. Support legislation and regulation that would bring stability to the PCIA and/or provide new mechanisms for CCAs to securitize PCIA charges.
- e. Support legislation and regulation that advances ratepayer equity.
- f. Oppose legislation and regulation that would increase or expand exit fees on CCA customers.

VI. Resource Adequacy

- a. Support legislation and regulation to address shortfalls in the Resource Adequacy market including transmission constraints, interconnection or project delays, and minimizing market power.
- b. Oppose legislation and regulation that would supplant CCAs' procurement authority for Resource Adequacy or impose compliance penalties not grounded in market realities.
- c. Support reform of the CPUC Resource Adequacy program to allow for stability in the resource adequacy value of existing resources and allow for departing load to access existing resources at fair market value.
- d. Advocate for and support efforts to remove barriers to demand response, microgrids and behind the meter resources to provide Resource Adequacy.

VII. Nonbypassable Charges

- a. Oppose legislation and regulation that restricts or limits SDCP's ability to procure its own energy products to meet state policy goals.
- b. Support legislation that promotes a level playing field between CCAs and other market participants.
- c. Support legislation that enhances the flexibility of CCA programs to support statewide procurement policy and develop and expand programs, local options, and rate design to support SDCP's community and customers.

VIII. Community Resilience

- a. Advocate for and support funding for programs implemented by CCAs and their member jurisdictions to increase community resilience to wildfires, public safety power shutoff (PSPS) events

and other potential service disruptions.

- b. Support legislation and regulation that reduces barriers to microgrid and other distributed energy resource development by CCAs.
- c. Oppose legislation and regulation that would enable IOUs to be the only developer of microgrids and other distributed energy resources.
- d. Support legislation and regulation that increases development of community-level resources and distributed energy resources that increase resilience and reduce the need for new transmission and distribution infrastructure.

IX. Local Economic Development

- a. Support legislation and regulation that is consistent with SDCP's commitment to an inclusive and sustainable workforce.
- b. Support legislation and regulation that enhances opportunities for CCAs to promote local economic development through locally designed programs that meet the unique needs of their member agencies, communities, and customers.
- c. Support efforts to enhance development of local and regional sources of renewable energy, including supporting efforts to reform and expedite permitting processes
- d. Support policies that ensure a just transition of workers into the non-fossil fuel, clean energy economy.
- e. Support legislation and regulation that enables CCAs to collaborate with their member jurisdictions on local energy resources and projects to advance environmental objectives.
- f. Advocate for and support efforts to direct state and federal funding to CCAs to deliver local energy resources and projects, as appropriate.

X. California Energy Market Structure & Expansion

- a. Oppose legislation that expands direct access or the ability of electric service providers to selectively recruit CCA or IOU customers.
- b. Support legislation that would create renewable content and environmental standards for electric service providers to match the products offered by CCAs.
- c. Support legislation that changes California's market structures towards innovative models that reduce costs of energy service and support the expansion of carbon-free resources.
- d. Support legislation that advocates for equitable and timely data access/sharing between the IOUs, CCAs and other LSEs to support accurate and timely load forecasts, which aid in overall statewide grid reliability and resiliency efforts.
- e. Support regulatory and legislative efforts for the development of a regional market structure that enhances SDCP's mission to provide affordable renewable energy for a sustainable future for the San Diego region. This includes:
 - i. Preserving SDCP's ability to make resource choices that best serve its customers' needs, as well as state and Board adopted goals.
 - ii. Maintaining SDCP's commitment to an inclusive and sustainable workforce for the region, and keeping jobs in

- California and preserving union work opportunities in California's energy sector.
- iii. Maintaining a transparent governance process that provides equitable representation of the interests of all market participants.
- iv. Focusing on customer benefit, with a particular focus on resource cost-savings for SDCP customers.
- v. Enhancing grid reliability in a variable generation grid while achieving clean energy goals in the quickest way possible.
- vi. Coordinating transmission planning, to the extent feasible to enhance deliverability, reduce congestion, and help cost-effectively and reliably meet renewable and clean energy goals.

XI. Finance

- a. Support legislation that enhances the financial standing of CCAs and their ability to receive a positive credit rating.
- b. Oppose legislation that reduces or removes the tax-exempt status of municipal bonds.
- c. Oppose any legislation that would divert CCA revenues to the State or other governmental entities.
- d. Oppose policies that inequitably transfer risk from IOUs to CCAs(e.g. including within the implementation of the provider of last resort framework).
- e. Oppose legislation that disrupts or impairs the ability of CCAs to maintain or achieve financial stability.

XII. Educational, Neighborhood and Social Services

- a. Support legislation and regulation that aids or helps to fund SDCP to provide energy support services, education, and opportunities for reducing energy costs to people who are low-income, seniors, veterans, and/or people with disabilities, or otherwise have historically been marginalized. Support policies and efforts to ensure that services and education are offered in languages other than English.
- b. Support legislation and regulation that increase targeted funding for energy efficiency, demand response, solar plus storage, transportation electrification programs, behind the meter programs, and energy literacy programs and services.
- c. Support legislation and regulation that would result in improved indoor air quality. For example, policies that would require or encourage appropriate ventilation be added when efficiency improvements, such as weatherproofing, insulation and double pane windows are installed.

XIII. Rate Affordability and Modernization

- a. Support legislative and regulatory efforts to promote affordable rates for all Californians while ensuring ratepayer equity and maintaining CCA ratemaking autonomy and financial solvency.
- b. Support policies that enhance CCA timely access to quality billing data to enable demand flexibility initiatives and innovative rate design.
- c. Oppose policy mandates that violate CCA ratemaking autonomy or impose fixed fees within the generation component of rates.
- d. Oppose policies that would result in increasing utility customer delivery



rates rather than utilizing alternative state or federal funding to accomplish stated policy goals.



SAN DIEGO COMMUNITY POWER Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Kenny Key, Director of Power Contracts

Via: Karin Burns, Chief Executive Officer

Subject: Resource Adequacy Agreement with 90FI 8me LLC

Date: March 28, 2024

RECOMMENDATION

Approve the proposed 5-year Resource Adequacy Agreement with 90FI 8me LLC for up to 74 MW of (4-hour) Battery Energy System Storage (BESS) capacity and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (SDCP) strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term contracts are integral components of its portfolio. Long-term contracts provide renewable generation and clean energy storage facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term contract that SDGP signs with a developing facility will underpin a new, incremental project. In addition, long-term contracts lock in energy, capacity, and/or resource adequacy supply around which SDGP can build its power supply portfolio while also providing cost certainty around which SDGP can develop its pro forma financial model.

The proposed Resource Adequacy ("RA") Agreement is for resource adequacy benefits from a 74 MW/296 MWh, 4-hour battery energy storage facility ("BR2") with 90FI 8me LLC, a subsidiary of Avantus. The Agreement originated from an offer SDGP received in late 2022 via its 2022 Long-Term California RPS-Eligible Renewable Energy RFP. SDGP engaged with Avantus on BR2 after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION



Staff negotiated the attached RA Agreement for the purchase of RA benefits from the BR2 project, which is a co-located solar photovoltaic and battery storage project to be developed in Imperial County by Avantus.

Below is additional information regarding Avantus and the Agreement.

Background on Avantus:

- Avantus (formerly 8minute) was founded in 2009 to focus on next generation solar energy, including the nation's largest solar cluster and the first power plant to deliver energy for less than fossil fuel prices.
- Avantus has developed, financed and constructed over 2,000 megawatts (MWdc) of solar in operation with more than 42,000 MW of solar photovoltaic (PV) and over 78,000 megawatt-hours (MWh) of energy storage currently under development.
- With a heritage in California, Avantus is one of the state's top solar developers, with offices in Los Angeles, El Centro, San Francisco and Sacramento.

Contract Overview – BR2

- Project Nameplate Capacity: 74 MW/296 MWh (4-hour) lithium-ion battery energy system
- Project location: Imperial County, California
- Guaranteed initial delivery date: December 31, 2027
- Deliverability: Contract is contingent on Avantus obtaining deliverability for the BR2 project via a deliverability transfer request with CAISO
- Contract term: 5 years
- Pricing: Fixed price
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet guaranteed resource adequacy guarantees once the project is operational.
- SDCP would receive an option to contract with Avantus for a full Power Purchase Agreement for the BR2 project for deliveries beginning in 2028 should the project obtain deliverability via the transfer request with CAISO.
 - The full project would be approximately 225MW of solar photovoltaic and 74 MW/296 MWh (4-hour) of lithium-ion battery energy system

Community Benefits:

- Avantus has signed 5-craft PLAs for all California projects, and BR2 will be no different. The project is committed to executing a Project Labor Agreement and will identify the unions involved when the agreement is negotiated.

COMMITTEE REVIEW



The ECWG recommended the project for shorting listing at the conclusion of the request for proposals review period.

FISCAL IMPACT

The competitive capacity pricing of the Agreement is confidential, but the long-term purchase of resource adequacy will provide SDCP with significant value and cost certainty over the term of this Agreement.

ATTACHMENTS

Attachment A: Resource Adequacy Agreement with 90FI 8me LLC



**RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

A. Parties

Seller: 90FI 8me LLC, a Delaware limited liability company

Buyer: San Diego Community Power, a California joint powers authority

B. Unit Information

Unit Name:	Big Rock 2
Location:	El Centro, Imperial Co.
CAISO Resource ID:	TBD
Unit SCID:	TBD
Unit NQC:	74 MW
Unit EFC:	148 MW
Resource Type:	Energy Storage
Resource Category (1, 2, 3 or 4):	Category 1
FCR Category (1, 2 or 3):	Category 2
Path 26 (North or South):	South
Local Capacity Area (if any, as of Effective Date):	San Diego – Imperial Valley
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	None
Run Hour Restrictions	None

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☒ LAR Attributes with FCR Attributes

D. Delivery Term

The Delivery Term is five (5) Contract Years.

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E. Contract Quantities

The Contract Quantities for each Showing Month of the Delivery Term shall be:

LAR Attributes: 74 MW NQC

FCR Attributes: 148 MW EFC

F. Contract Price

The Contract Price shall be: [REDACTED]/kw-month multiplied by the Contract Quantity of LAR Attributes delivered during each Showing Month of the Delivery Term.

G. Seller's Security Amounts

Initial Development Security: [REDACTED].

Final Development Security: [REDACTED]/kW multiplied by the Contract Quantity of LAR Attributes.

Performance Security: [REDACTED]/kW multiplied by the Contract Quantity of LAR Attributes.

H. Milestones

Milestone	Date for Completion
Site Control obtained	[REDACTED]
[REDACTED]	[REDACTED]
Federal and/or State discretionary permits obtained	[REDACTED]
Interconnection Agreement executed	[REDACTED]
Construction Start expected	[REDACTED]
[REDACTED]	[REDACTED]
Guaranteed Initial Delivery Date	[REDACTED]

I. Contract Capacity

74 MW-AC at four (4) hours of continuous discharge.

TABLE OF CONTENTS

COVER SHEET	1
PREAMBLE	6
ARTICLE 1: DEFINITIONS	6
ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT	16
2.1 Term.....	16
2.2 Conditions Precedent to Initial Delivery Date.	17
ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT.....	17
3.1 Resource Adequacy Capacity Product.....	17
3.2 Seller’s and Buyer’s Obligations.	18
3.3 [Reserved].....	18
3.4 Delivery Point.....	18
3.5 Planned Outages.	18
3.6 Alternate Capacity and Replacement Units.	19
3.7 Delivery of Product.....	19
3.8 Damages for Failure to Provide Designated RA Capacity.....	20
3.9 Damages and Indemnities for Failure to Deliver Contract Quantity.....	20
3.10 Monthly RA Capacity Payment.	21
3.11 Allocation of Other Payments and Costs.	21
3.12 Force Majeure.....	22
ARTICLE 4: CAISO OFFER REQUIREMENTS	22
ARTICLE 5: EVENTS OF DEFAULT; REMEDIES.....	22
5.1 Events of Default.	23
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.	24
5.3 Net Out of Settlement Amounts.....	25
5.4 Notice of Payment of Termination Payment.....	25
5.5 Disputes with Respect to Termination Payment.	25
5.6 Closeout Setoffs.....	25
ARTICLE 6: PAYMENT AND NETTING.....	25
6.1 Billing Period.....	25
6.2 Timeliness of Payment.....	25
6.3 Disputes and Adjustments of Invoices.....	26
6.4 Netting of Payments.	26
6.5 Payment Obligation Absent Netting.	26
ARTICLE 7: LIMITATIONS	27
7.1 Limitation of Remedies, Liability and Damages.	27
ARTICLE 8: GOVERNMENTAL CHARGES	27
8.1 Cooperation.	27

CONFIDENTIAL: EXECUTION FORM 3-22-24

8.2	Governmental Charges	27
ARTICLE 9: [RESERVED]		28
ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS.....		28
10.1	Mutual Representations and Warranties	28
10.2	Buyer and Seller Covenants.....	29
10.3	Seller Representations, Warranties and Covenants.....	30
10.4	Buyer Representations, Warranties and Covenants.	31
ARTICLE 11: CONFIDENTIALITY.....		31
ARTICLE 12: BUYER'S RE-SALE OF PRODUCT		32
ARTICLE 13: COMPLIANCE OBLIGATION		33
ARTICLE 14: COLLATERAL REQUIREMENTS		33
14.1	Development Security.....	33
14.2	Performance Security.....	34
14.3	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	34
ARTICLE 15: INSURANCE.....		35
15.1	Insurance.....	35
15.2	Evidence of Insurance.....	36
ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE		37
16.1	Construction of the Unit.	37
16.2	Initial Delivery Date.	37
ARTICLE 17: MISCELLANEOUS.....		42
17.1	Title and Risk of Loss.....	42
17.2	Indemnity.....	42
17.3	Assignment.	42
17.4	Governing Law and Venue.....	43
17.5	Notices.....	43
17.6	Mobile-Sierra.....	43
17.7	General.....	44
17.8	Audit.....	45
17.9	Forward Contract.....	45
17.10	Dispute Resolution.....	45
17.11	Execution.....	45
17.12	Joint Powers Authority.....	46
17.13	Dodd-Frank Act.	46
17.14	[Reserved].	46
17.15	Rules of Interpretation.	46
EXHIBIT A: FORM OF LETTER OF CREDIT		1
EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE		1
EXHIBIT C: FORM OF INITIAL DELIVERY DATE CERTIFICATE		1

CONFIDENTIAL: EXECUTION FORM 3-22-24

EXHIBIT D: DESCRIPTION OF UNIT.....	1
EXHIBIT E: WORKFORCE DEVELOPMENT	1
EXHIBIT F: PROGRESS REPORTING FORM.....	1
EXHIBIT G: NOTICES.....	1

CONFIDENTIAL: EXECUTION FORM 3-22-24

PREAMBLE

This Resource Adequacy Agreement (“Agreement”) is entered into between **90FI 8me LLC**, a Delaware limited liability company (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of [REDACTED], 2024 (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Unit; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

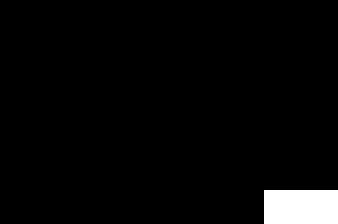
NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “Alternate Capacity” means any replacement RA Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product provided by the Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having LAR Attributes and no RAR Attributes, and no such LAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.4 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including the Tariff.
- 1.5 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.6 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.7 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

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action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

- 1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.9 “Buyer” has the meaning set forth in the Preamble.
- 1.10 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.11 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.12 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.13 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.14 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.8 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) 
- 1.15 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.16 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.17 “Claims” means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.18 “Compliance Issue” has the meaning set forth in Article 13.
- 1.19 “Compliance Obligation” means the RAR, LAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction over Buyer.

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- 1.20 “Confidential Information” has the meaning set forth in Article 11.
- 1.21 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.22 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.23 “Contract Capacity” has the meaning set forth in Section I of the Cover Sheet.
- 1.24 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.25 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.26 “Contract Year” means a period of twelve (12) consecutive months during the Delivery Term. The first Contract Year shall commence on the Initial Delivery Date, and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.
- 1.27 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction, and all reasonable and documented attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the Terminated Transaction.
- 1.28 “CPUC” means the California Public Utilities Commission or its successor.
- 1.29 “CPUC Clearinghouse” means a database of women, minority, LGBT, persons with disabilities and disabled veteran businesses that is certified by the Supplier Clearinghouse.
- 1.30 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.31 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.32 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.33 “Deliverability Outside Date” means the date set forth in Section H of the Cover Sheet, by which Seller must have obtained the Required PCDS Transfer under Section 16.2(b)(i).
- 1.34 “Delivery Point” has the meaning set forth in Section 3.4.

CONFIDENTIAL: EXECUTION FORM 3-22-24

- 1.35 “Delivery Term” means the period of Contract Years set forth in Section D of the Cover Sheet beginning on the Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.36 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Alternate Capacity from one or more Replacement Units in accordance with Section 3.6, less any excused reduction in the Contract Quantity of Product for such Showing Month due to Force Majeure as described in Section 3.1, for which Seller has not elected to provide Alternate Capacity from one or more Replacement Units in accordance with Section 3.6.
- 1.37 “Development Cure Period” has the meaning set forth in Section 16.2(d).
- 1.38 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.39 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.40 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.41 “Effective Date” is the date set forth in the Preamble.
- 1.42 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.43 “EPC Contract” means Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.44 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.45 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.46 “Event of Default” has the meaning set forth in Section 5.1.
- 1.47 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.48 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to

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the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

- 1.49 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.50 “Final Development Security” means collateral in the form of cash or a Letter of Credit in the amount set forth for the Final Development Security in Section G of the Cover Sheet.
- 1.51 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Rulings.
- 1.52 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements, exclusive of LAR and RAR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.53 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.54 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not limited to, the following events (but only to the extent that such an event satisfies the requirements set forth in the preceding sentence): [REDACTED] acts of God such as storms, hail, hurricanes, floods, lightning, fire, explosion, earthquakes, or other natural disasters; civil disturbance; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; insurrection; rebellion; violent demonstrations; sabotage; strikes, lock-outs, or work stoppages, if such strike, lock-out or work stoppage is part of a national action; [REDACTED], a state of emergency declared by a relevant Governmental Body. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider to the extent such curtailment is directly caused by the claiming Party whether due to its action or inaction; *provided, however*, that the existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.
- 1.55 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.56 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.

CONFIDENTIAL: EXECUTION FORM 3-22-24

- 1.57 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.58 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; (c) any court or governmental tribunal, and (d) CAISO, but in all cases, excludes both Parties.
- 1.59 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.60 “Guaranteed Initial Delivery Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(d).
- [REDACTED]

- 1.62 “Initial Delivery” has the meaning set forth in Section 16.2(a).
- 1.63 “Initial Delivery Date” means the date on which Initial Delivery is achieved.
- 1.64 “Initial Development Security” means collateral in the form of cash or a Letter of Credit in the amount set forth for the Initial Development Security in Section G of the Cover Sheet.
- 1.65 “Interconnection Agreement” means the interconnection agreement to be entered into by Seller pursuant to which the Unit and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.66 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.67 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or, if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.68 “Investment Grade” means a Credit Rating of at least “BBB-” from S&P and/or “Baa3” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.69 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

CONFIDENTIAL: EXECUTION FORM 3-22-24

- 1.70 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.71 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff, exclusive of RAR and FCR. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.72 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes or FCR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.
- 1.73 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.74 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least “A-” with an outlook designation of “stable” from S&P or “A3” with an outlook designation of “stable” from Moody’s, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.75 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.
- 1.76 “LRA” has the meaning set forth in the Tariff.
- 1.77 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.78 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.79 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.80 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

CONFIDENTIAL: EXECUTION FORM 3-22-24

- 1.81 “MW” means megawatt.
- 1.82 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.83 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.84 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.85 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.86 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.87 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.88 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligations of the Unit under the CAISO Offer Requirements consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.89 “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is San Diego Gas & Electric.
- 1.90 “Partial Capacity Deliverability Status” or “PCDS” has the meaning set forth in the Tariff.
- 1.91 “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth for the Performance Security in Section G of the Cover Sheet.
- 1.92 “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- [REDACTED]
- [REDACTED]
- 1.95 “Product” has the meaning set forth in Section 3.1.
- 1.96 “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.97 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses

CONFIDENTIAL: EXECUTION FORM 3-22-24

the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

- 1.98 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.99 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.100 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.101 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.102 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.103 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.104 “Replacement Capacity” has the meaning specified in Section 3.8 hereof.
- 1.105 “Replacement Unit” means a unit meeting the requirements specified in Section 3.6 hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity. A Replacement Unit may not be a coal-fired or nuclear generating resource.
- [REDACTED]
- [REDACTED]
- 1.108 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.109 “Resold Product” has the meaning set forth in Article 12.
- 1.110 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.111 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.112 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent resource adequacy Applicable

CONFIDENTIAL: EXECUTION FORM 3-22-24

Law, as such Applicable Laws may be amended or modified from time-to-time throughout the Delivery Term.

- 1.113 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

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

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

- 1.118 “Scheduling Coordinator” has the same meaning as in the Tariff.

- 1.119 “Security Interest” has the meaning set forth in Section 14.3(a).

- 1.120 “Seller” has the meaning set forth in the Preamble.

- 1.121 “Settlement Amount” means, with respect to the Non-Defaulting Party, the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.

- 1.122 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.123 “Site” means the real property on which the Unit is located as identified in Appendix D.

- 1.124 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

- 1.125 “Substitution Rules” has the meaning specified in the Tariff.

- 1.126 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.

CONFIDENTIAL: EXECUTION FORM 3-22-24

- 1.127 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.128 “Term” has the meaning set forth in Section 2.1.
- 1.129 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.130 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.131 “Transmission Provider” means the CAISO.
- 1.132 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.133 “Unit” means the storage asset described in Section B of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit may not include a coal-fired or nuclear generating resource.
- 1.134 “WECC” means the Western Electricity Coordinating Council.
- 1.135 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the earlier of (a) the termination of this Agreement in accordance with its terms (including Sections 5.2 and 16.2) and (b) the expiration of the Delivery Term, *provided* that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Initial Development Security, Final Development Security or Performance Security, as applicable, is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Initial Delivery Date following Seller’s completion of all conditions precedent set forth in Section 2.2. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(g) (Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date) survive early

CONFIDENTIAL: EXECUTION FORM 3-22-24

termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall provide notice of expected Initial Delivery Date to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer.

(b) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Initial Delivery Date has occurred.

(c) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(d) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(e) Seller shall have provided Buyer with a copy of written notice from CAISO that the Unit has achieved Full Capacity Deliverability Status or Partial Capacity Deliverability Status for at least 74 MW.

(f) Seller shall have obtained an NQC for the Unit of at least 74 MW.

(g) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's Scheduling Coordinator to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's Scheduling Coordinator to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(h) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(i) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide Buyer with RA Capacity from the Unit in the amount of the Contract Quantity of (i) LAR Attributes and (ii) FCR Attributes if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each

CONFIDENTIAL: EXECUTION FORM 3-22-24

Showing Month (the “Product”). Seller’s obligation to deliver the Contract Quantity of Product for each Showing Month of the Delivery Term is firm and will not be excused for any reason other than Force Majeure.

If the Unit is not available to provide the full amount of the Contract Quantity with respect to an applicable Showing Month for any reason other than Force Majeure, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then the terms of Sections 3.8 and 3.9 hereof shall apply.

Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity that is in excess of the Unit’s Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2 Seller’s and Buyer’s Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3 [Reserved].

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the pNode described in Exhibit D, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Alternate Capacity, as required by the CAISO, during any Planned Outages (including the cost of procuring Alternate Capacity for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, Seller shall not schedule any Planned Outages for non-emergency maintenance from each June 1 through October 31 during the Delivery Term, unless (i) such Planned Outage is required to avoid an emergency or damage to the Unit or its Interconnection Facilities, (ii) such Planned Outage is required by law, or the requirements of CAISO or the interconnecting utility and/or any Governmental Body, or (iii) the Parties agree otherwise in writing.

3.6 Alternate Capacity and Replacement Units.

(a) The “Notification Deadline” for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or if Seller desires to provide the Contract Quantity for any Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and any Replacement Unit(s) up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends to provide Buyer with Alternate Capacity from identified Replacement Unit(s) no later than the Notification Deadline.

(c) If Seller fails to provide Buyer the Contract Quantity of Product from the Unit or a Replacement Unit for a given Showing Month during the Delivery Term, then Buyer may, but shall not be required to, purchase replacement Product from a third party.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by Buyer.

(b) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer’s instructions, including Buyer’s instructions to withhold all or part of the Designated RA Capacity from Seller’s Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer’s Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month. If Buyer directs Seller to withhold all or part of the Designated RA Capacity from Seller’s Supply Plan for any Showing Month during the Delivery Term, the amount of withheld Designated RA Capacity will be deemed delivered hereunder.

(c) Consistent with the Substitution Rules, take all action, or cause the Unit’s Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser under Article 12 to utilize the Contract Quantity during each Showing Month under the Substitution Rules,

CONFIDENTIAL: EXECUTION FORM 3-22-24

including, but not limited to, ensuring that the Designated RA Capacity being provided in the pertinent Showing Month will qualify for substitution under the Substitution Rules and providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having LAR Attributes and no RAR Attributes, and no such LAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (A) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity not provided by Seller for which Buyer obtained Replacement Capacity and (B) the product of the Contract Price times the amount of the Designated RA Capacity not provided by Seller for which Buyer obtained Replacement Capacity. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

3.9 Damages and Indemnities for Failure to Deliver Contract Quantity.

Subject to the Capacity Replacement Price limits set out in Section 1.14, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from (a) Seller's failure to provide any portion of the Designated RA Capacity that was not replaced and subject to the provisions of Section 3.8, for the respective Showing Month for the Delivery Term; or (b) failure by Seller's Scheduling Coordinator with respect to the Unit to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; *provided*, in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer

CONFIDENTIAL: EXECUTION FORM 3-22-24

for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for the Product, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month; *provided*, if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. The “Monthly RA Capacity Payment” shall be equal to the product of (i) the applicable Contract Price for that Showing Month, (ii) the Designated RA Capacity of the Product delivered as set forth in Section 3.7 for the Showing Month and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit’s Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit’s Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit’s Scheduling

CONFIDENTIAL: EXECUTION FORM 3-22-24

Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.12 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall resume performance of its obligations under this Agreement as soon as reasonably practicable. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, or if otherwise prevented due to an event of Force Majeure, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Designated RA Capacity in compliance with the Tariff, including compliance with Minimum State of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff and Seller shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder (the "CAISO Offer Requirements"). Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) Seller’s failure to achieve Initial Delivery on or before the Guaranteed Initial Delivery Date, as may be extended pursuant to Section 16.2(d);
- (c) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not remedy such default within thirty (30) days after written notice thereof;
- (d) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for Seller’s obligations to deliver the Product, the exclusive remedy for which is provided in Sections 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;
- (e) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;
- (g) such Party becomes Bankrupt;
- (h) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;
- (i) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;
- (j) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or
- (k) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives notice of the occurrence of any of the following events:

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- (i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
- (ii) the issuer of such Letter of Credit becomes Bankrupt;
- (iii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (v) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (vi) such Letter of Credit fails or ceases to be in full force and effect at any time;
or
- (vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the Initial Delivery Date and Seller is the Defaulting Party, then Buyer shall have the right to retain the full amount of the then-posted Initial Development Security or Final Development Security, if any, as liquidated damages, as its sole remedy. If the Early Termination Date occurs after the Initial Delivery Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting

CONFIDENTIAL: EXECUTION FORM 3-22-24

Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus, (b) any or all other amounts due to the Non-Defaulting Party under this Agreement, against (c) all amounts that are due to the Defaulting Party, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

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

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

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

[REDACTED]

[REDACTED]

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

CONFIDENTIAL: EXECUTION FORM 3-22-24

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

ARTICLE 9: [RESERVED]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and

CONFIDENTIAL: EXECUTION FORM 3-22-24

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;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) 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;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(h) it has entered into this Agreement in connection with the conduct of its business and will have the capacity or ability to make or take delivery of the Product on or prior to the Initial Delivery Date.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Designated RA Capacity for the sole benefit of Buyer or any subsequent purchaser under Article 12. Such commercially reasonable actions shall include:

(a) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from the Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of

CONFIDENTIAL: EXECUTION FORM 3-22-24

new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents and warrants as of the Effective Date as set forth in Sections 10.3(e)(i), (i)-(k) and (m) and covenants to Buyer during the Delivery Term as set forth in Sections 10.3(a)-(d), (e)(ii), (f)-(h) and (l) that:

(a) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) (i) The Unit is within the CAISO Control Area and (ii) Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR, as applicable;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

CONFIDENTIAL: EXECUTION FORM 3-22-24

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to Buyer, at least fifteen (15) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

(l) Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Unit are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 10.3(l) will be satisfied upon the execution of a project labor agreement related to construction of the Unit.

(m) Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Clearinghouse, and voluntary disclosure regarding Seller's efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit E.

10.4 Buyer Representations, Warranties and Covenants.

(a) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement ("Confidential Information") to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to fulfill such Party's obligations under this Agreement or to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however*, each Party shall, to the extent

CONFIDENTIAL: EXECUTION FORM 3-22-24

practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect or copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No less than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product solely and directly due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred

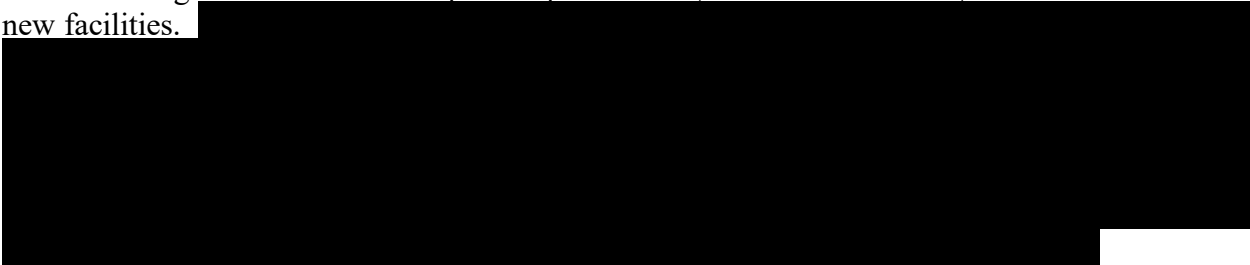
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under this Agreement if Buyer had not resold the Product, including pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: COMPLIANCE OBLIGATION

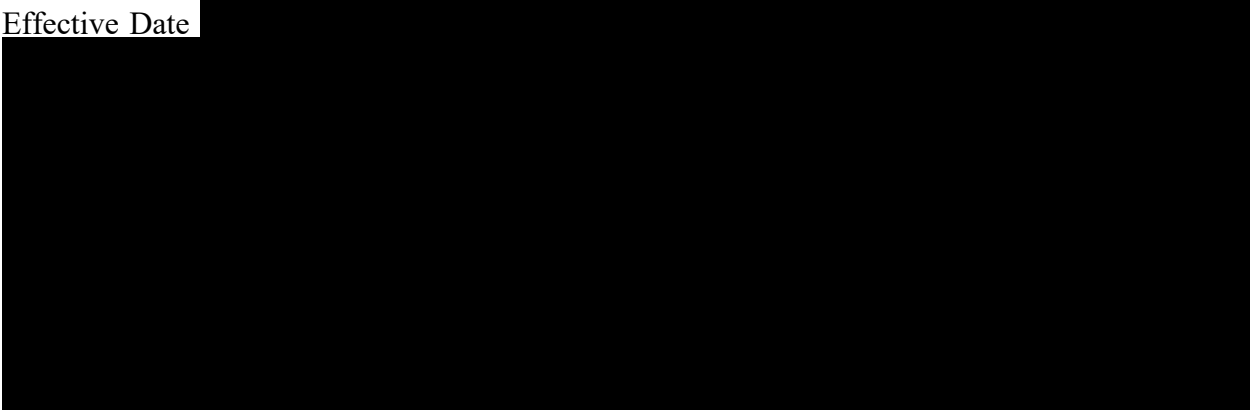
The Parties acknowledge and agree that a material purpose of this Agreement is to enable Buyer to satisfy its Compliance Obligation. If, at any time during the Term, the Unit is not qualified to produce Product, including RAR Attributes, LAR Attributes, and FCR Attributes, as applicable, including due to any action by the CPUC, CAISO or any Governmental Body having jurisdiction that results in any change in Applicable Law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Compliance Issue"), the Parties shall work in good faith to revise this Agreement so that the Parties can perform their obligations regarding the purchase and sale of Product sold hereunder in order to maintain the original intent; *provided, however*, in no event shall Seller be obligated to undertake capital improvements, Unit enhancements, or the construction of new facilities.



ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Development Security.

Seller shall deliver the Initial Development Security to Buyer within thirty (30) days following the Effective Date



Buyer shall promptly return the unused portion of the Final Development Security, less any amounts drawn in accordance with this Agreement, upon the earlier to occur of the following: (i) the Initial Delivery Date has occurred, and Seller has posted Performance Security in accordance with Section 2.2(c) and Section 14.2; or (ii) the Agreement has terminated prior to the Initial Delivery Date in accordance with the terms of this Agreement. If the Initial Development Security or Final Development Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the period of time for which the Initial Development Security or Final Development Security, as applicable, is required to be maintained, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Initial Development Security or Final Development Security, as applicable.

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Performance Security in full force and effect, and shall within five (5) Business Days after any draws made by Buyer in accordance with this Agreement replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early in accordance herewith; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released or returned as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Initial Development Security, Final Development Security and Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

CONFIDENTIAL: EXECUTION FORM 3-22-24

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Initial Development Security, Final Development Security or Performance Security, as applicable, Buyer may do any one or more of the following:

(i) Exercise any of its rights and remedies with respect to the Initial Development Security, Final Development Security or Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Initial Development Security, Final Development Security or Performance Security, as applicable; and

(iii) Liquidate Initial Development Security, Final Development Security or Performance Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 15: INSURANCE¹

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than [REDACTED] [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(b) Commercial General Liability.

¹ Buyer NTD: Revisions to Article 15 are pending feedback from SDCP insurance.

CONFIDENTIAL: EXECUTION FORM 3-22-24

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, with a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed or via policy wording to provide contractual liability in said amount (subject to policy terms and conditions), and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy with a minimum limit of liability of [REDACTED].

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with a combined single limit of [REDACTED] per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Initial Delivery Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Time-Element (Sudden and Accidental) Pollution Liability.

(i) Seller shall maintain or require to be maintained, time-element (sudden and accidental) pollution liability coverage, included as part of the required Commercial General Liability policy, for bodily injury, property damage, including clean-up costs and defense costs, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] each occurrence for bodily injury and property damage.

15.2 Evidence of Insurance.

Within thirty (30) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by

CONFIDENTIAL: EXECUTION FORM 3-22-24

Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND INITIAL DELIVERY DATE

16.1 Construction of the Unit.

(a) Construction Start. “Construction Start” will occur upon satisfaction of the following: (i) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and (ii) Seller has issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.”

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Unit.

16.2 Initial Delivery Date.

(a) Initial Delivery. “Initial Delivery” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Initial Delivery for the Unit to occur by the Guaranteed Initial Delivery Date, as such date may be extended by a Development Cure Period pursuant to Section 16.2(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

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

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyer's respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of Seller's breach, performance or non-performance of its obligations under this Agreement, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyer's and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees associated with damage to third parties resulting from, or arising out of Buyer's breach, performance or non-performance of its obligations under this Agreement, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to such third parties, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is

CONFIDENTIAL: EXECUTION FORM 3-22-24

equal to or higher than that of such Party at the time of such transfer or assignment, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party at the time of such transfer or assignment; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Southern District of California or the Superior Court of California, County of San Diego, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

17.5 Notices.

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

17.6 Mobile-Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party

CONFIDENTIAL: EXECUTION FORM 3-22-24

(to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter

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

17.8 Audit.

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

17.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.13 Dodd-Frank Act

The Parties intend this Agreement to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583, 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

17.14 [Reserved]

17.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

CONFIDENTIAL: EXECUTION FORM 3-22-24

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” or “or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

[Remainder of Page Intentionally Left Blank]

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

**90FI 8ME LLC, a Delaware limited liability
company**

**SAN DIEGO COMMUNITY POWER,
a California joint powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Resource Adequacy Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail, or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXXX] or [XXXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

CONFIDENTIAL: EXECUTION FORM 3-22-24

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.²

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

² **Buyer NTD:** SDCP to confirm revisions.

CONFIDENTIAL: EXECUTION FORM 3-22-24

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Resource Adequacy Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because an Event of Default with Seller as a defaulting party occurs (as such terms are defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

CONFIDENTIAL: EXECUTION FORM 3-22-24

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[Seller]

By:_____

Its:_____

Date:_____

CONFIDENTIAL: EXECUTION FORM 3-22-24

EXHIBIT C: FORM OF INITIAL DELIVERY DATE CERTIFICATE

This certification ("Certification") of Initial Delivery is delivered by [Seller] ("Seller") to San Diego Community Power, a California joint powers authority ("Buyer") in accordance with the terms of that Resource Adequacy Agreement dated [date] (the "Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than 74 MW.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than 74 MW and receiving instructions to charge, store and discharge energy.
- d) Seller's Interconnection Agreement provides for a maximum instantaneous discharge capability of no less than 74 MW.
- e) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, SDG&E on [DATE].

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: Big Rock 2

Unit description: 74MW x 4hr battery

Resource type: Battery Energy Storage

Nameplate capacity: 74MWac

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT E: WORKFORCE DEVELOPMENT

Sample Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer “Not Applicable” or “Decline to State.”

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

*Required

1. Business Name*

2. Email Address*

3. Where is your business located/headquartered?

4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com.

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

5. If you answered “yes” to Question 4, when does your certification expire?

6. If you answered “yes” or “qualified, but not certified” to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

CONFIDENTIAL: EXECUTION FORM 3-22-24

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

CONFIDENTIAL: EXECUTION FORM 3-22-24

Yes, history of multi-trade PLA but not in this contract with SDCP

Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

Yes

No

15. If you answered "yes" to question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 17 is "Yes," please explain and provide supporting documentation.

19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 19 is "Yes", please explain and provide supporting documentation.

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones and the Initial Delivery Date.
6. Summary of activities during the previous quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month, as applicable.
8. Written description about the progress relative to the Milestones and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

90FI 8ME LLC, a Delaware limited liability company (“Seller”)	SAN DIEGO COMMUNITY POWER, a California joint powers authority (“Buyer”)
All Notices: Avantus LLC 4370 Town Center Blvd., Ste. 110 El Dorado Hills, CA 95762 Attn: Transactions Phone: (323) 525-0900 Email: transactions@avantus.com	All Notices: P.O. Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Accounts Payable c/o Avantus LLC Phone: (323) 525-0900 E-mail: invoice@avantus.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: Accounts Receivable c/o Avantus LLC Phone: (323) 525-0900 E-mail: ap@avantus.com	Payments: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Wire Transfer: BNK: [REDACTED] ABA: ACCT: Attn: Ref: []	Wire Transfer: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED] Attn: Rosa Cucicea VP – Clean Energy Division Manager (415) 293-4201 Ph (925) 323-6022 Cell (415) 293-4201 Fx 201 Mission St., Suite 1300 San Francisco, CA 94105
	With additional Notices of an Event of Default to: Attn: Veera Tyagi, General Counsel, SDCP PO Box 12716 San Diego, CA 92112 Email: vtyagi@sdcommunitypower.org

EXHIBIT H: TERM SHEET



GLOSSARY OF TERMS

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community

DASR – Direct Access Service Request – Request submitted by C&I to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DWR – Department of Water Resources – DWR manages California's water resources, systems, and infrastructure in a responsible, sustainable way.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IOU – Investor-Owned Utility – A private electricity and natural gas provider.

IRP – Integrated Resource Plan – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWh – Megawatt-hour – measure of energy

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E’s service territory.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as “in-state” renewables

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or “exit fee” - Power Charge Indifference Adjustment (PCIA) is an “exit fee” based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label - A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – Proposed Decision - A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

Pnode – Pricing Node - In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement - A contract used to purchase the energy, capacity and attributes from a renewable resource project.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

SGIP – Self-Generation Incentive Program - A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol - Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is

based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.