VALLEY
CLEAN ENERGY

**Meeting of the Valley Clean Energy Alliance**
**Board of Directors**
**Thursday, April 8, 2021 at 4:00 p.m.**
**Via Teleconference**

**Pursuant to the Provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing, all members of the Board of Directors and all staff will attend this meeting telephonically. Any interested member of the public who wishes to listen in should join this meeting via video/teleconferencing as set forth below.**

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

**Members of the public who wish to listen to the Board of Director's meeting may do so with the video/teleconferencing call-in number and meeting ID code. Video/teleconference information below to join meeting:**

**Join meeting via Zoom:**

a. **From a PC, Mac, iPad, iPhone, or Android device with high-speed internet. (If your device does not have audio, please also join by phone.)**
   **https://us02web.zoom.us/j/87247931050**
   **Meeting ID: 872 4793 1050**

b. **By phone**
   One tap mobile:
   +1-669-900-9128,,87247931050# US
   +1-253-215-8782,,87247931050# US

   Dial:
   +1-669-900-9128 US
   +1-253-215-8782 US
   **Meeting ID: 872 4793 1050#**

**Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.**

**Board Members:** Dan Carson (Chair/City of Davis), Jesse Loren (Vice Chair/City of Winters), Don Saylor (Yolo County), Tom Stallard (City of Woodland), Lucas Frerichs (City of Davis), Wade Cowan (City of Winters), Gary Sandy (Yolo County), and Mayra Vega (City of Woodland)

**<u>4:00 p.m. Call to Order</u>**

1. **Welcome**
2. **Approval of Agenda**
3. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda <u>or</u> are listed on the Consent portion of the agenda. Public comments on matters <u>listed</u> on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

**CONSENT AGENDA**

4. **Approve March 11, 2021 Board meeting Minutes.**
5. **Receive 2021 Long Range Calendar.**
6. **Receive Financial Update – February 28, 2021 (unaudited) financial statement.**
7. **Receive Legislative update.**
8. **Receive April 1, 2021 Regulatory update provided by Keyes & Fox.**
9. **Receive March 31, 2021 Customer Enrollment update.**
10. **Receive Community Advisory Committee March 25, 2021 meeting summary.**
11. **Approval of Amendment 3 to Pacific Policy Group, lobbyist consultant agreement, extending the agreement to June 30, 2022 at a not to exceed amount of $60,000.**
12. **Approval of extension of agreement with Donald Dame for consulting services to expire on June 30, 2022.**
13. **Consider amending Resolution 2020-022 to modify time for regular Board meetings.**
14. **Approval of First Amendment to the Westlands Solar Park Power Purchase Agreement modifying Force Majeure and liability provisions.**

**REGULAR AGENDA**

15. **Introduction of Fiscal Year 2021/2022 preliminary draft Operating Budget. (Discussion)**
16. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.
17. **Adjournment:** The Board has scheduled a meeting for Thursday, May 13, 2021 at 4:00 p.m. to be held via video/teleconference.

**PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS MEETING ON THURSDAY, APRIL 8, 2021 AT 4:00 P.M.:**

**PUBLIC PARTICIPATION**. Public participation for this meeting will be done electronically via e-mail ***<u>and</u>*** during the meeting as described below.

**<u>Public participation via e-mail:</u>** If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org. If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting.

**Verbal public participation during the meeting:** If participating during the meeting, there are two (2) ways for the public to provide verbal comments:

1) If you are attending by computer, activate the "participants" icon at the bottom of your screen, then raise your hand (hand clap icon) under "reactions".
2) If you are attending by phone only, you will need to press *9 to raise your hand. When called upon, please press *6 to unmute your microphone.

**VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.**

**Public Comments:** If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or notifying the host as described above. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the "Subject" line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: https://valleycleanenergy.org/board-meetings/.

**Accommodations for Persons with disabilities.** Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org.

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 4**

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**TO:** Board of Directors

**FROM:** Alisa Lembke, Board Clerk / Administrative Analyst

**SUBJECT:** Approval of Minutes from March 11, 2021 Board Meeting

**DATE:** April 8, 2021

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## RECOMMENDATION

Receive, review and approve the attached March 11, 2021 Board meeting Minutes.

**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE**
**BOARD OF DIRECTORS REGULAR MEETING**
**THURSDAY, MARCH 11, 2021**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, March 11, 2021 at 4:00 p.m., to be held via Zoom videoconference. Chair Dan Carson established that there was a quorum present and began the meeting at 4:03 p.m.

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| Board Members Present: | Dan Carson, Jesse Loren, Tom Stallard, Don Saylor, Lucas Frerichs, Wade Cowan, Mayra Vega |
| Members Absent: | Gary Sandy |

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| Approval of Agenda / Designation of Board Subcommittee | Motion made by Director Stallard to approve the March 11, 2021 Board meeting agenda, seconded by Director Loren. Motion passed unanimously with Gary Sandy absent. |
| Public Comment | Chair Carson opened the floor for public comment. There were no written or verbal public comments. |
| Approval of Consent Agenda | There were no written or verbal public comments. Director Saylor congratulated the City of Winters for their successful enrollment into Valley Clean Energy with 92% participation. Chair Carson mentioned to those present that he would like to look at whether to hold a meeting in August. Staff will reach out to Board Members to see if this will fit with their schedules.<br><br>Motion made by Director Frerichs to approve the consent agenda, seconded by Director Saylor. Motion passed unanimously with Gary Sandy absent. The following items were approved, ratified, and/or received:<br>4. February 11, 2021 Board meeting Minutes;<br>5. 2021 Long Range Calendar;<br>6. Financial Updated – January 30, 2021 (unaudited) financial statement;<br>7. March 3, 2021 Regulatory update provided by Keyes & Fox;<br>8. March 3, 2021 Customer Enrollment Update;<br>9. Community Advisory Committee February 25, 2021 meeting summary, including copies of 2021 Task Group Charges; and,<br>10. Support of two legislative bills: SB 612 and AB 843. |
| Item 11: Consider adoption of statement supporting | Interim General Manager Mitch Sears introduced this item. VCE Staff Gordon Samuel provided a summary of the staff report. Chair Carson opened the floor for public comment. There were no written public comments. Verbal comment was provided: |

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| electrification of new buildings | VCE Community Advisory Committee (CAC) Member Mark Aulman provided verbal comment that he strongly endorses the statement as stated in the Staff recommendation. The electrification of new buildings does provide a pathway to greenhouse gas reduction and is a means of avoiding embedding future fossil use in buildings. There are a variety of options available for local jurisdictions which are worthy of discussion and will ensure social justice is maintained for all citizens. For this purpose, the shared information called for in this recommendation will be of vital importance. For that reason, the CAC unanimously endorsed this staff recommendation. |

Christine Shewmaker provided a verbal comment that the CAC's Programs Task Group looked at ways to incentivize building electrification retrofits to decarbonize our building stock and it became very clear that the best, cheapest and easiest retrofit was one that we did not have to do it all. Encouraging new building electrification sends a good message and fits with our long term decarbonization goals. Decarbonization and carbon neutral goals are getting traction broadly in California. SMUD's draft plan to get to zero carbon by 2030, emphasizes electrification specifically building electrification. The reasons being are similar here: health, CO2 and lower cost. New building electrification is something that could be done now that will have a positive greenhouse gas emissions impact long into the future.

CAC Member David Springer provided a verbal comment that Title 24 Standards for 2023 are going to have features in terms that will lower the cost of electrification by requiring prewiring for future heat pumps, water heaters and other things. We are anticipating these measures coming into play. It makes sense to point to what other CCAs and jurisdictions are doing.

Mr. Sears informed those present that electrification has been mentioned, among other topics, in Staff's discussions with Member jurisdictions, and there is movement at the local level to support electrification.

Director Loren commented that Winters has invested time and energy in a Climate Action Plan which has not yet been presented to City Council. It is unknown at this time how much electrification is talked about within the document. She does support the statemant.

Director Cowan commented that he does not support getting rid of natural gas or the complete electrification of houses and buildings. He does not believe the technology is anywhere near where it needs to be for heating and cooling, water, and those types of things. He believes that having natural gas is a good thing to have around.

Director Stallard commented he supports electrification because it is a good starting point, but he would like to encourage everyone to have an open mind moving forward. He refers to VCE Staff Gordon Samuel's footnote in the slides that retrofitting existing home/buildings from gas to electric can be costly and complex. Even with new buildings, it is costly to put in the proper electric panel with enough power to service an all electric building.

Board Members encouraged Staff to be active in distributing and communicating the statement to others. Legal Counsel was asked to provide information to Staff on the legal challenges of banning natural gas, then this information is to be provided to the member jurisdictions and to the Board when electrification documents are transmitted.

Director Loren made a motion to: 1) adopt a statement supporting and encouraging electrification of new buildings; 2) share information regarding new building electrification broadly with the member jurisdictions upon request; and, 3) join the Building Decarbonization Coalition at the General Level, seconded by Director Saylor. Motion passed by the following vote:
AYES: Carson, Loren, Saylor, Stallard, Frerichs, Vega
NOES: Cowan
ABSENT: Sandy
ABSTAIN: None

Item 12: Consider adopting VCE customer rates commencing March 2021 to match PG&E's generation rates.

Mr. Sears introduced this item. VCE Staff Edward Burnham reviewed slides.

Several comments were made by the Board Members: focus on being competitive and getting VCE's rates lower than PG&E's before putting efforts into programs; concerns over losing customers if VCE does not deliver lower rates; and, VCE's opportunity to distinguish themselves from PG&E and their programs by our local control and ability to have lower generation rates.

Chair Carson reminded those present that Staff and CAC Rates Task Group are looking at rate alternatives, addressing customers, and disadvantage communities per VCE's Strategic Plan. Mr. Sears informed those present that other CCAs are looking at decoupling and going to a "cost of service" approach. Mr. Burnham is working with the CAC Rates Task Group on the cost issues and finding additional funding for programs. There are no written or verbal public comments.

Director Loren made a motion to adopt Valley Clean Energy customer rates effective March 1, 2021 to match Pacific Gas & Electric's generation rates, seconded by Director Frerichs. Motion passed by the following vote:
AYES: Carson, Loren, Saylor, Stallard, Frerichs, Cowan, Vega
NOES: None
ABSENT: Sandy
ABSTAIN: None

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| Item 13: Board Member and Staff Announcements | Mr. Sears informed those present that part of the work coming out of the Strategic Plan is that Staff have been engaging with member jurisdictions attending Council and Board of Supervisor meetings. There are opportunities to partner with member jurisdictions to cobrand and enroll customers into California Alternate Rates for Energy (CARE) program, Family Electric Rate Assistance (FERA) program, and City utility programs. He attended an informative brown bag webinar sponsored by CalCCA on credit ratings and process.<br><br>Mr. Sears informed those present that Resource Adequacy (RA) structure and market are being discussed at the California Public Utilities Commission (CPUC). CalCCA is deeply involved with this discussion which also extends to CCAs. VCE is following this conversation. He reminded those present that Board Members will be reaching out to individual member jurisdictions looking for letters of support on Senate Bill 612, which is a legislative bill about power charge indifference adjustment (PCIA) and credit of attributes.<br><br>Director Frerichs reminded those present that tomorrow marks one year of holding virtual meetings. He would like to suggest changing the start time from 4 p.m. to something later, such as 5 or 5:30 p.m. to accommodate those Board Members who have a difficult time attending the earlier meeting time. Chair Carson asked the Board Clerk to find out if an alternate time would work.<br><br>The next regular Board meeting is scheduled for April 8, 2021 at 4 p.m. via video/teleconference. |
| Public Comment on Closed Session Items | Chair Carson asked if there was any written or verbal comment from the public on any of the Closed Session items. There were no written or verbal public comments. Legal Counsel, Harriet Steiner informed those present that it is anticipated that there will be no reporting out after Closed Session. |
| Adjournment | Chair Carson adjourned the meeting at 4:58 p.m. to go into Closed Session. |
| Item 14: CLOSED SESSION: Conference with Legal Counsel – Anticipated Litigation | The Board started their Closed Session at 5:00 p.m. and adjourned their meeting at 5:24 p.m. There was nothing to report out. |

Alisa M. Lembke
VCE Board Secretary

## VALLEY CLEAN ENERGY ALLIANCE

**Staff Report - Item 5**

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**TO:** Board of Directors

**FROM:** Alisa Lembke, Board Clerk/Administrative Analyst

**SUBJECT:** Board and Community Advisory Committee 2021 Long-Range Calendar

**DATE:** April 8, 2021

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### Recommendation

Receive and file the 2021 Board and Community Advisory Committee long-range calendar listing proposed meeting topics.

# VALLEY CLEAN ENERGY

## 2021 Meeting Dates and ***Proposed*** Topics – Board and Community Advisory Committee

| MEETING DATE | | TOPICS | ACTION |
|---|---|---|---|
| ~~January 14, 2021~~ Special Meeting January 21, 2021 | **Board** ~~WOODLAND~~ | • Oaths of Office for Board Members<br>• Approve Updated CAC Charge<br>• Approve 2021 Procurement Plan<br>• Treasurer Function / Investment<br>• GHG Free Attributes<br>• Power Purchase Agreement<br>• Arrearage Management Plan | • Action<br>• Action<br>• Action<br>• Action<br>• Action<br>• Action<br>• Action |
| January 28, 2021 | **Advisory Committee** ~~WOODLAND~~ | • Formation of 2021 Task Groups<br>• Quarterly Power Procurement / Renewable Portfolio Standard Update<br>• Quarterly Strategic Plan update<br>• New Building Electrification<br>• 2021 Marketing Outreach Plan<br>• CA Community Power Agency Joint Powers Authority | • Discussion/Action<br>• Informational<br>• Informational<br>• Informational/Discussion<br>• Action: Recommendation to Board<br>• Action: Recommendation to Board |
| February 11, 2021 | **Board** ~~DAVIS~~ | • Update on SACOG Grant – Electrify Yolo<br>• 2021 Marketing Outreach Plan<br>• CA Community Power Agency Joint Powers Authority<br>• Update on January 2021 Rates<br>• Update on Time of Use (TOU) roll out | • Informational<br>• Action<br>• Discussion/Action<br>• Informational<br>• Informational |
| February 25, 2021 | **Advisory Committee** ~~DAVIS~~ | • Update on SACOG Grant – Electrify Yolo<br>• 2021 Task Groups – Tasks/Charge<br>• New Building Electrification<br>• Legislative Bills<br>• Update on Time of Use (TOU) roll out | • Informational<br>• Discussion/Action<br>• Discussion/Action<br>• Discussion/Action<br>• Informational |

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| March 11, 2021 | **Board**<br>~~**WOODLAND**~~ | • New Building Electrification<br>• Legislative Bills | • Discussion/Action<br>• Action |
| March 25, 2021 | **Advisory Committee**<br>~~WOODLAND~~ | • Draft Programs Plan | • Discussion |
| April 8, 2021 | **Board**<br>~~DAVIS~~ | • Preliminary FY21/22 Operating Budget | • Informational/Discussion |
| April 22, 2021 | **Advisory Committee**<br>~~DAVIS~~ | • Quarterly Power Procurement / Renewable Portfolio Standard Update<br>• Quarterly Strategic Plan update<br>• SMUD 2030 Zero Carbon Plan - presentation<br>• AB 992 (Social Media)/Brown Act - Best Best Krieger presentation | • Informational<br>• Informational<br>• Informational<br>• Informational/Discussion |
| May 13, 2021 | **Board**<br>~~WINTERS~~ | • Update on FY21/22 Operating Budget<br>• Update on SACOG Grant – Electrify Yolo<br>• River City Bank – Dec. Covenant Amendment (tentative) | • Informational<br>• Informational<br>• Action |
| May 27, 2021 | **Advisory Committee**<br>~~WOODLAND~~ | • Net Energy Metering (NEM) Policy<br>• Update on SACOG Grant – Electrify Yolo<br>• Briefing on preliminary FY21/22 Operating Budget<br>• Draft 3-Year Programs Plan (placeholder) | • Informational/Discussion<br>• Informational<br>• Informational<br>• Action: Recommendation to the Board |
| June 10, 2021 | **Board**<br>~~DAVIS~~ | • Final Approval of FY21/22 Operating Budget<br>• Receive Enterprise Risk Management Report<br>• Extension of Waiver of Opt-Out Fees for one more year<br>• Re/Appointment of Members to Community Advisory Committee<br>• SMUD CPI Increase Amendment<br>• Net Energy Metering (NEM) Policy<br>• Draft 3-Year Programs Plan (placeholder) | • Approval<br>• Informational<br>• Action<br>• Action<br>• Action<br>• Discussion/Action<br>• Action |
| June 24, 2021 | **Advisory Committee**<br>~~DAVIS~~ | • Prioritizing types of energy (placeholder) | • Discussion/Action |

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| July 8, 2021 | **Board** ~~WOODLAND~~ | • Renewable Portfolio Standard (RPS) Procurement Plan<br>• River City Bank Line of Credit | • Action<br>• Action |
| July 22, 2021 | **Advisory Committee** ~~WOODLAND~~ | • Quarterly Power Procurement / Renewable Portfolio Standard Update<br>• Quarterly Strategic Plan update | • Informational<br>• Informational |
| August 12, 2021 | **Board** ~~DAVIS~~ | **Currently, this meeting is cancelled, but will remain on the long range calendar should the need arise to hold a meeting.** | |
| August 26, 2021 | **Advisory Committee** ~~DAVIS~~ | • Update on SACOG Grant – Electrify Yolo | • Informational |
| September 9, 2021 | **Board** ~~WOODLAND~~ | • Update on SACOG Grant – Electrify Yolo<br>• Approval of FY20/21 Audited Financial Statements (James Marta & Co.)<br>• River City Bank Revolving Line of Credit | • Informational<br>• Action<br>• Action |
| September 23, 2021 | **Advisory Committee** ~~WOODLAND~~ | | |
| October 14, 2021 | **Board** ~~WINTERS~~ | • Financial Load Forecast<br>• FY2020/2021 Allocation of Net Margin<br>• Receive Update on 3 year Strategic Plan (adopted Oct. 2020)<br>• Certification of Standard and UltraGreen Products | • Informational<br>• Action<br>• Informational<br>• Action |
| October 28, 2021 | **Advisory Committee** ~~DAVIS~~ | • Receive Financial Load Forecast and Allocation of Net Margin information<br>• Update on Power Content Label Customer Mailer<br>• Committee Evaluation of Calendar Year End<br>• Quarterly Power Procurement / Renewable Portfolio Standard Update<br>• Quarterly Strategic Plan update | • Informational<br>• Informational<br>• Discussion<br>• Informational<br>• Informational |
| **November 11, 2021** | **Board** ~~WOODLAND~~ | • Certification of Power Content Label<br>• Update on SACOG Grant – Electrify Yolo | • Action<br>• Informational |

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| **Veterans' Day – Holiday – need to reschedule** | | | |
| November 18, 2021<br>(3rd Thursday of the month due to Thanksgiving holiday) | **Advisory Committee**<br>~~WOODLAND~~ | • Committee Evaluation of Calendar Year End<br>• Review Revised Procurement Guide<br>• Update on SACOG Grant – Electrify Yolo | • Discussion/Action<br>• Action: Recommendation to Board<br>• Informational |
| December 9, 2021 | **Board**<br>~~DAVIS~~ | • Receive Enterprise Risk Management Report<br>• Approve Revised Procurement Guide<br>• Receive CAC 2021 Calendar Year End Report<br>• Election of Officers for 2022 | • Informational<br>• Action<br>• Receive<br>• Nominations |
| December 16, 2021<br>(3rd Thursday of the month due to Christmas holiday) | **Advisory Committee**<br>~~DAVIS~~ | • Discuss 2022 Task Group(s) formation<br>• Election of Officers for 2022 | • Discussion<br>• Nominations |
| January 13, 2022 | **Board**<br>~~WOODLAND~~ | • Oaths of Office for Board Members<br>• Approve Updated CAC Charge (tentative) | • Action<br>• Action |
| January 27, 2022 | **Advisory Committee**<br>~~WOODLAND~~ | • Quarterly Power Procurement / Renewable Portfolio Standard Update<br>• Quarterly Strategic Plan update | • Informational<br>• Informational |

Note: CalCCA Annual Meeting 11/29, 11/30 and 12/1 (**tentative**) San Jose

**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 6**

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**TO:** Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Edward Burnham, Finance and Operations Director

**SUBJECT:** Financial Update – February 28, 2021 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending February 28, 2021

**DATE:** April 8, 2021

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**RECOMMENDATION**:
Accept the following Financial Statements (unaudited) for the period of February 1, 2021 to February 28, 2021 (with comparative year to date information) and Actual vs. Budget year to date ending February 28, 2021.

**BACKGROUND & DISCUSSION**:
The attached financial statements are prepared in a form to satisfy the debt covenants with River City Bank pursuant to the Line of Credit and are required to be prepared monthly.

The Financial Statements include the following reports:

- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows

In addition, staff is reporting the Actual vs. Budget variances year to date ending February 28, 2021.

<u>Financial Statements for the period February 1, 2021 – February 28, 2021</u>
In the Statement of Net Position, VCEA as of February 28, 2021 has a total of $13,263,188 in its checking, money market and lockbox accounts, $1,100,000 restricted assets for the Debt Service Reserve account and $1,670,781 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and owes as of February 28, 2021 $35,813. VCEA member obligations are incurred monthly due to staffing, accounting and legal services.

The term loan with River City Bank includes a current portion of $395,322 and a long-term portion of $1,087,039 as of February 28, 2021, for a total of $1,482,461. On February 28, 2021, VCE’s net position is $15,921,692.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded $2,731,236 of revenue (net of allowance for doubtful accounts) of which $2,497,146 was billed in February and ($1,462,901) represent estimated unbilled revenue. The cost of the electricity for the February revenue totaled $2,832,344. For February, VCEA's gross margin is approximately (3%) and operating loss totaled ($469,559). The year-to-date change in net position was ($652,031).

In the Statement of Cash Flows, VCEA cash flows from operations was ($336,335) due to February cash receipts of revenues being lower than the monthly cash operating expenses.

<u>Actual vs. Budget Variances for the year to date ending February 28, 2021</u>

Below are the financial statement line items with variances >$50,000 and 5%:

- Electric Revenue - $4,645,201 and 13% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts have not been as severe as anticipated and the weather has been warmer than forecast.

- Purchased Power - $3,840,042 and 12% – variance is due to load being more favorable year-to-date than planned; the COVID and recessionary impacts have not been as severe as anticipated and the weather has been warmer than forecast.

- Contract Labor – 55,009 and 50% unfavorable variance to budget due to SMUD contract labor extended during recruitment and transition to VCE in-house staff.

- SMUD – Operations Services – (68,598) and (42%) favorable variance to budget related to VCE staff onboarding and less support required for current operations.

- Legal General Counsel – ($78,870) and (80%) – favorable variance to budget due to services lower than planned from member agencies and no major cases requiring general counsel.

- New Member Expenses – (51,500) and (100%) favorable variance to budget related to no new member territories being added this year. Winters onboarding expenses are included in marketing and outreach.

- Contingency – ($156,401) and (100%) – favorable variance to budget is due to not having a need yet to utilize the contingency funds set aside in the budget.

**Attachments:**

1) Financial Statements (Unaudited) February 1, 2021 to February 28, 2021 (with comparative year to date information.)
2) Actual vs. Budget for year to date ending February 28, 2021

**VALLEY CLEAN ENERGY ALLIANCE**

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF FEBRUARY 1 TO FEBRUARY 28, 2021

PREPARED ON MARCH 30, 2021

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENT OF NET POSITION
February 28, 2021
(UNAUDITED)

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| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ | 13,263,188 |
| Accounts receivable, net of allowance | | 4,151,699 |
| Accrued revenue | | 1,462,901 |
| Prepaid expenses | | 11,886 |
| Other current assets and deposits | | 6,883 |
| Total current assets | | 18,896,557 |
| Restricted assets: | | |
| Debt service reserve fund | | 1,100,000 |
| Power purchase reserve fund | | 1,670,781 |
| Total restricted assets | | 2,770,781 |
| Noncurrent assets: | | |
| Other noncurrent assets and deposits | | 100,000 |
| Total noncurrent assets | | 100,000 |
| **TOTAL ASSETS** | $ | 21,767,338 |
| **LIABILITIES** | | |
| Current liabilities: | | |
| Accounts payable | $ | 478,685 |
| Accrued payroll | | 30,076 |
| Interest payable | | 3,357 |
| Due to member agencies | | 35,813 |
| Accrued cost of electricity | | 2,832,227 |
| Other accrued liabilities | | (1,326,144) |
| Security deposits - energy supplies | | 2,258,640 |
| User taxes and energy surcharges | | 36,570 |
| Current Portion of LT Debt | | 395,322 |
| Total current liabilities | | 4,744,546 |
| Noncurrent liabilities | | |
| Term Loan- RCB | | 1,087,139 |
| Total noncurrent liabilities | | 1,087,139 |
| **TOTAL LIABILITIES** | $ | 5,831,685 |
| **NET POSITION** | | |
| Restricted | | |
| Local Programs Reserve | | 224,500 |
| Restricted | | 2,770,781 |
| Unrestricted | | 12,940,372 |
| **TOTAL NET POSITION** | $ | 15,935,653 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF FEBRUARY 1, 2021 TO FEBRUARY 28, 2021
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING FEBRUARY 28, 2021 | YEAR TO DATE |
|---|---|---|
| **OPERATING REVENUE** | | |
| Electricity sales, net | $ 2,731,369 | $ 39,446,901 |
| **TOTAL OPERATING REVENUES** | 2,731,369 | 39,446,901 |
| | | |
| **OPERATING EXPENSES** | | |
| Cost of electricity | 2,832,344 | 37,194,199 |
| Contract services | 198,567 | 1,769,391 |
| Staff compensation | 137,781 | 793,911 |
| General, administration, and other | 31,613 | 341,342 |
| **TOTAL OPERATING EXPENSES** | 3,200,305 | 40,098,843 |
| | | |
| **TOTAL OPERATING INCOME (LOSS)** | (468,936) | (651,942) |
| | | |
| **NONOPERATING REVENUES (EXPENSES)** | | |
| Interest income | 3,604 | 39,201 |
| Interest and related expenses | (4,224) | (39,290) |
| **TOTAL NONOPERATING REVENUES (EXPENSES)** | (620) | (89) |
| | | |
| **CHANGE IN NET POSITION** | (469,556) | (652,031) |
| Net position at beginning of period | 16,405,209 | 16,587,684 |
| Net position at end of period | $ 15,935,653 | $ 15,935,653 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF FEBRUARY 1 TO FERUARY 28, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING FEBRUARY 28, 2021 | YEAR TO DATE |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES** | | |
| Receipts from electricity sales | $ 3,341,667 | $ 42,742,006 |
| Receipts for security deposits with energy suppliers | (147,000) | 1,743,000 |
| Payments to purchase electricity | (2,689,641) | (38,953,399) |
| Payments for contract services, general, and adminstration | (707,096) | (4,268,950) |
| Payments for staff compensation | (134,265) | (775,639) |
| Other cash payments | - | (4,343) |
| **Net cash provided (used) by operating activities** | (336,335) | 482,675 |
| **CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES** | | |
| Principal payments of Debt | (32,943) | (263,545) |
| Interest and related expenses | (4,767) | (40,368) |
| **Net cash provided (used) by non-capital financing activities** | (37,710) | (303,913) |
| **CASH FLOWS FROM INVESTING ACTIVITIES** | | |
| Interest income | 3,604 | 39,201 |
| **Net cash provided (used) by investing activities** | 3,604 | 39,201 |
| **NET CHANGE IN CASH AND CASH EQUIVALENTS** | (370,441) | 217,963 |
| Cash and cash equivalents at beginning of period | 16,404,410 | 15,816,006 |
| **Cash and cash equivalents at end of period** | $ 16,033,969 | $ 16,033,969 |
| Cash and cash equivalents included in: | | |
| Cash and cash equivalents | 13,263,188 | 13,263,188 |
| Restricted assets | 2,770,781 | 2,770,781 |
| **Cash and cash equivalents at end of period** | $ 16,033,969 | $ 16,033,969 |

**VALLEY CLEAN ENERGY ALLIANCE**
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF FEBRUARY 1 TO FERUARY 28, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

| | FOR THE PERIOD ENDING FEBRUARY 28, 2021 | YEAR TO DATE |
|---|---|---|
| **RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING** | | |
| Operating Income (Loss) | $ (468,936) | $ (651,942) |
| (Increase) decrease in net accounts receivable | 649,369.00 | 1,808,512 |
| (Increase) decrease in accrued revenue | (1,805) | 1,510,294 |
| (Increase) decrease in prepaid expenses | 10,011 | (11,261) |
| (Increase) decrease in inventory - renewable energy credi | - | - |
| (Increase) decrease in other assets and deposits | - | (4,343) |
| Increase (decrease) in accounts payable | 12,049 | (163,715) |
| Increase (decrease) in accrued payroll | 3,516 | 18,272 |
| Increase (decrease) in due to member agencies | (226,805) | (80,653) |
| Increase (decrease) in accrued cost of electricity | 142,703 | (1,759,200) |
| Increase (decrease) in other accrued liabilities | (272,171) | (1,902,588) |
| Increase (decrease )security deposits with energy supplier | (147,000) | 1,743,000 |
| Increase (decrease) in user taxes and energy surcharges | (37,266) | (23,701) |
| **Net cash provided (used) by operating activities** | $ (336,335) | $ 482,675 |

**VALLEY CLEAN ENERGY**
**ACTUAL VS. BUDGET FYE 6-30-2021**
**FOR THE YEAR TO DATE ENDING 02-28-2021**

| GL# | Description | 1/31/2021 YTD FY2021 Actuals | 1/31/2021 YTD FY2021 Budget | YTD Variance | % over/-under |
|---|---|---|---|---|---|
| 301.00 | Electric Revenue | $ 39,446,901 | $ 34,801,700 | $ 4,645,201 | 13% |
| 311.00 | Interest Revenues | 39,201 | 83,843 | (44,643) | -53% |
| | | | | | |
| 415.00 | Purchased Power | 37,194,194 | 33,354,152 | 3,840,042 | 12% |
| | Labor & Benefits | 770,577 | 762,249 | 8,328 | 1% |
| 451.10 | Salaries & Wages/Benefits | 532,722 | 567,757 | (35,035) | -6% |
| 451.20 | Contract Labor | 166,531 | 111,522 | 55,009 | 49% |
| 453.41 | Human Resources & Payroll | 71,324 | 82,970 | (11,647) | -14% |
| | Office Supplies & Other Expenses | 106,225 | 97,886 | 8,339 | 9% |
| 452.10 | Technology Costs | 26,835 | 14,330 | 12,504 | 87% |
| 452.15 | Office Supplies | 1,203 | 1,536 | (333) | -22% |
| 452.25 | Travel | - | 4,064 | (4,064) | -100% |
| 452.30 | CalCCA Dues | 76,753 | 76,755 | (3) | 0% |
| 452.35 | Memberships | 1,435 | 1,200 | 235 | 20% |
| | Contractual Services | 1,808,976 | 1,992,426 | (183,450) | -9% |
| 453.10 | LEAN Energy | 13,320 | 16,000 | (2,680) | -17% |
| 453.15 | Don Dame | 2,596 | 6,667 | (4,071) | -61% |
| 453.20 | SMUD - Credit Support | 417,603 | 391,352 | 26,251 | 7% |
| 453.21 | SMUD - Wholesale Energy Services | 383,776 | 384,370 | (594) | 0% |
| 453.22 | SMUD - Call Center | 497,851 | 496,618 | 1,233 | 0% |
| 453.23 | SMUD - Operating Services | 96,130 | 164,727 | (68,598) | -42% |
| | Legal Bankruptcy | - | 16,400 | (16,400) | -100% |
| | Legal General Counsel | 19,530 | 98,400 | (78,870) | -80% |
| 453.36 | Regulatory Counsel | 135,295 | 126,608 | 8,687 | 7% |
| 453.37 | Joint CCA Regulatory counsel | 15,145 | 20,500 | (5,355) | -26% |
| 453.38 | Legislative | 40,000 | 41,000 | (1,000) | -2% |
| 453.40 | Accounting Services | 15,250 | 16,400 | (1,150) | -7% |
| 453.42 | Audit Fees | 43,100 | 59,963 | (16,863) | -28% |
| 453.60 | PG&E Acquisition Consulting | 849 | - | 849 | 100% |
| 459.05 | Marketing Outreach | 128,532 | 153,422 | (24,890) | -16% |
| | Rents & Leases | 8,992 | 11,656 | (2,665) | -23% |
| 457.10 | Hunt Boyer Mansion | 8,992 | 11,656 | (2,665) | -23% |
| | Other A&G | 217,667 | 259,615 | (41,948) | -16% |
| 459.10 | PG&E Data Fees | 196,381 | 188,167 | 8,214 | 4% |
| 459.15 | Community Engagement Activities & Sponsorships | 2,036 | 4,100 | (2,064) | -50% |
| 459.20 | Insurance | 4,260 | 5,028 | (768) | -15% |
| 459.08 | New Member Expenses | - | 51,500 | (51,500) | -100% |
| 459.70 | Banking Fees | 14,990 | 820 | 14,170 | 1728% |
| | Program Costs | - | 10,000 | (10,000) | -100% |
| 463.00 | Miscellaneous Operating Expenses | 2,495 | 4,190 | (1,695) | -40% |
| 463.99 | Contingency | - | 156,401 | (156,401) | -100% |
| | | | | | |
| | TOTAL OPERATING EXPENSES | $ 40,109,125 | $ 33,282,344 | $ 6,826,781 | 21% |
| | | | | | |
| 481.20 | Interest Expense - Munis | - | - | - | 0% |
| 481.10 | Interest on RCB loan | 38,535 | 39,610 | (1,075) | -3% |
| 482.10 | Interest Expense - SMUD | 431 | 646 | (215) | -33% |
| | | | | | |
| | NET INCOME | $ (661,989) | $ (1,793,288) | $ 1,131,299 | -63% |

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 7**

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To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: April 8, 2021

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Pacific Policy Group, VCE's lobby services consultant, continues to work with Staff and the Community Advisory Committee's Legislative - Regulatory Task Group on several legislative bills. Below is a summary:

The season of policy committee hearings is in full swing as five committee hearings have been scheduled in the month of April across the respective energy committees of the Assembly and Senate. The Assembly Utilities & Energy Committee (U&E) will hold hearings on April 7 and April 21 and Senate Energy, Utilities, & Communications Committee (E,U,C) will hold hearings on April 12, April 19, and April 26. As the board may recall, only five bills were heard in Assembly U&E last session so the fact that two hearings are scheduled is a sign that the legislative process is somewhat more normal this session.

VCE's current legislative efforts are concentrated on the following two bills:

**1. SB 612 (Portantino). Electrical Corporations. Allocation of Legacy Resources.**
<u>Summary</u>: This bill adds new sections to the Public Utilities Code that are designed to ensure fair and equal access to the benefits of legacy resources held in IOU portfolios and management of these resources to maximize value for all customers.

Specifically, the bill will:

1) Provide IOU, CCA, and direct access customers equal right to receive legacy resource products that were procured on their behalf in proportion to their load share if they pay the full cost of those products.
2) Require the CPUC to recognize the value of GHG-free energy and any new products in assigning cost responsibility for above-market legacy resources, in the same way value is recognized for renewable energy and other products.
3) Require IOUs to offer any remaining excess legacy resource products not taken by IOU, CCA, or direct access customers to the wholesale market in an annual solicitation.
4) Require each IOU to transparently solicit interest from legacy resource contract holders on renegotiating, buying out, or otherwise reducing costs from these contracts.

VCE has taken a support position on this bill and is working on generating additional support from VCE member jurisdictions and local constituencies who may be able to influence VCE's state legislators. The bill has been referred to the Senate E,U,C, a committee of which Senator Dodd is a member. VCE plans to meet with Senator Dodd and his staff throughout the month of April to try and secure his support for SB 612.

This bill is consistent with the VCE Legislative Platform, specifically provisions 4(a) and (c) regarding legislation to increase transparency and stability to PCIA.

Additional Information

- VCE Position: Support
- CalCCA Position: Sponsor
- Next hearing: The bill has been referred to Senate Energy, Utilities & Communications Committee but has not yet been set for hearing.
- Bill language: SB 612

**2. AB 843 (Aguiar-Curry). California Renewable Portfolio Standard Program: Renewable Feed-in-Tariff.**

Summary: This bill authorizes CCAs to voluntarily bring contracts to the CPUC for bioenergy projects procured via the BioMAT feed-in-tariff. The bill would clarify that CCAs are eligible to retain the renewable portfolio standard and resource adequacy benefits of the energy procured under this section.

The BioMAT program was established by SB 1122 (2012, Rubio) and requires the three large IOUs to collectively procure by 2025 250MW of bioenergy across the following three categories (PG&E amounts shown):

1. Category 1: Biogas from wastewater treatment, municipal organic waste diversion, food processing, and co-digestion.
   - 30.5MW for PG&E | 28MW remaining
2. Category 2: Dairy and other agricultural bioenergy.
   - 33.5MW for PG&E | 13.4MW remaining
3. Category 3: Sustainable forest management byproducts bioenergy.
   - 47MW for PG&E | 36MW remaining

The bill will not affect the total amount of megawatts needing to be procured.

VCE has taken a support position and is actively working on securing the necessary votes for AB 843 to pass Assembly U&E at the committee's April 7 hearing. VCE, through its lobbyist, has had a number of outreach meetings on the bill to try and gain more support for AB 843 while ensuring potential opposition to emerge. Thanks to VCE's efforts, AB 843 enjoys support from groups such as Californians Against Waste while also ensuring opposition does not emerge from groups such as Sierra Club. Opposition has recently emerged from the Coalition of California Utility Employees and PG&E has expressed concern.

This bill is consistent with the VCE Legislative Platform, specifically provision 8(a) to support legislation that expands opportunities to develop renewable energy resources including bioenergy.

Additional Information

- VCE Position: Support
- CalCCA Position: Support
- The bill is being co-sponsored by MCE and Pioneer Community Choice Energy.
- Next hearing: April 7 in Assembly Utilities & Communications Committee
- Bill language: AB 843

There are numerous bills that have been introduced and starting to be vetted through various policy committees. Aside from the two bills mentioned above, staff wanted to highlight the following bills to the Board.

| Measure | Summary | Calendar | VCE Position | CalCCA Position |
|---|---|---|---|---|
| AB 64 (Quirk) | AB 64 would require the PUC and CEC to develop a strategy, by January 1, 2024, that achieves (1) a target of 5 gigawatt hours of operational long-term backup electricity, as specified, by December 31, 2030, and (2) a target of at least an additional 5 gigawatt hours of operational long-term backup electricity in each subsequent year through 2045. The bill would require the PUC, by January 1, 2024, to submit the strategy developed in a report to the Legislature, and by January 1 of each 4th year thereafter, through January 1, 2044, would require the PUC to submit a report to the Legislature detailing the progress made toward achieving the targets of the long-term backup electricity supply strategy. | Asm. U&E No hearing date set | Developing Position | None |
| AB 339 (Lee) | Current law requires all meetings, as defined, of a house of the Legislature or a committee thereof to be open and public and requires all persons to be permitted to attend the meetings, except as specified. This bill would require all meetings, including gatherings using teleconference technology, to include an opportunity for all | Awaiting Committee Referral | Developing Position | None |

| | | | | |
|---|---|---|---|---|
| | persons to attend via a call-in option or an internet-based service option that provides closed captioning services and requires both a call-in and an internet-based service option to be provided to the public. | | | |
| AB 361 (R. Rivas) | Would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting for the purpose of declaring or ratifying a local emergency, during a declared state or local emergency, as those terms are defined, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local emergency provided the legislative body makes certain determinations by majority vote. | Asm. Local Gov. No hearing date set | Developing Position | None |
| AB 427 (Bauer-Kahan) | Establishes rules that allow demand response program and resources procured by an LSE to meet the LSE's resource adequacy requirements regardless of whether the program is integrated into the CAISO market. Additionally, the bill adopts a baseline methodology that treats energy storage charging as load in baseline calculations for DR programs and allows BTM solar + storage participating in a DR program to deliver electricity to the grid to provide RA. Lastly, the bill directs the CPUC to establish a capacity valuation methodology for storage and solar + storage BTM resources and that it applies to DR resources coupled with solar + storage. | Asm. U&E No hearing date set | Watch | Watch |
| AB 1088 (Mayes) | This bill would establish the California Procurement Authority (CPA) as a state-level central procurement entity for the electric sector, including as a provider of | Asm. U&E No hearing date set | Developing Position | Support if Amended |

| | | | | |
|---|---|---|---|---|
| | last resort (POLR) for load-serving entities (LSEs) that opt out of the procurement function. The CPA would also fill any resource adequacy (RA) and integrated resource planning (IRP) procurement gaps and serve as an LSE for customers not served by another LSE. There is a lot in this bill and if the bill sounds familiar, that's because it is very similar to a bill sponsored by CalCCA in 2020 however this bill adds POLR provisions. The bill is sponsored by San Diego Gas & Electric and is meant to create a pathway for them to exit the retail side of their business. | | | |
| AB 1161 (E. Garcia | Officially, AB 1161 aims to fast-track the deployment and procurement of new zero carbon energy resources to fulfill 100% of state agency needs by 2030, in addition to LSE procurement. Officially, AB 1161 also seeks to assist in balancing the grid, increasing reliability, and facilitating integration of other renewables with these new investments. There is concern that AB 1161 is actually seeking to create a pathway for long duration pumped storage to be built in and near Joshua Tree National Park. AB 1161 seeks to accomplish the official and unofficial goas by:<br><br>Accelerating the SB 100 zero carbon electricity target for state agencies from 2045 to 2030, requiring the California Department of Water Resources (DWR) to enter into PPAs for the development of new zero GHG resources to satisfy the accelerated target for all state agencies, coordinating available state incentives and financing assistance to lower the cost of electricity from state-procured resources, permitting state agencies to remain with existing LSEs | | Developing Position | Oppose Unless Amended |

| | | | | |
|---|---|---|---|---|
| | (including CCA and no new obligations or costs would be assigned to existing LSEs), and funding net above-market costs of long-term contracts from sources other than utility rates including the general fund. Rather than directly serving the state agency load, the bill would require the DWR to invest in new projects in an amount equivalent to the load, and then re-sell the RA attributes and energy (but not RECs) back into the wholesale markets. LSEs would not include the state agency load in their Power Source Disclosure label or in their RPS requirements. | | | |
| SB 67 (Becker) | The bill would establish the California 24/7 Clean Energy Standard Program, which would require that 85% of retail sales annually and at least 60% of retail sales within certain subperiods by December 31, 2030, and 90% of retail sales annually and at least 75% of retail sales within certain subperiods by December 31, 2035, be supplied by eligible clean energy resources, as defined. | | Developing Position | None |
| SB 99 (Dodd) | Would set forth guiding principles for plan development, including equitable access to reliable energy, as provided, and integration with other existing local planning documents. The bill would require a plan to, among other things, ensure that a reliable electricity supply is maintained at critical facilities and identify areas most likely to experience a loss of electrical service. This bill contains other related provisions. | | Support in Concept | None |
| SB 204 (Dodd) | Places the Base Interruptible Program (BIP) into statute. The BIP is an emergency electricity demand response program established by a proceeding many years ago. The program is regulated by the PUC and used as a last line of defense | Senate Appropriations Hearing April 5<br><br>Passed Senate E,U,C | | Watch |

| | | | | |
|---|---|---|---|---|
| | against rolling blackouts. While the bill places the program in statute, it only makes reference to the IOUs offering and administering the program even though an existing decision allows CCAs to offer and administer the program to their customers. | | | |

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 8**

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: April 8, 2021

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Please find attached Keyes & Fox's March 2021 Regulatory Memorandum dated April 1, 2021, an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

**Attachment:** Keyes & Fox Regulatory Memorandum dated April 1, 2021

KEYES&FOX LLP

# Valley Clean Energy Alliance

## Regulatory Monitoring Report

| | |
|---|---|
| To: | Valley Clean Energy Alliance ("VCE") Board of Directors |
| From: | Sheridan Pauker, Partner, Keyes & Fox, LLP<br>Tim Lindl, Partner, Keyes & Fox LLP<br>Ben Inskeep, Principal Analyst, EQ Research, LLC |
| Subject: | Regulatory Update |
| Date: | April 1, 2021 |

## Summary

Keyes & Fox LLP and EQ Research, LLC, are pleased to provide VCE's Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). A Glossary of Acronyms used is provided at the end of this memo.

In summary, this month's report includes regulatory updates on the following priority issues:

- **New: Provider of Last Resort Rulemaking:** On March 25, 2021, the CPUC issued an Order Instituting Rulemaking opening this proceeding to address issues regarding the provider of last resort.
- **New: 2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking:** On March 10, 2021, the CPUC issued an Order Instituting Rulemaking opening this proceeding to address the 2022 and 2023 Wildfire Fund Nonbypassable Charge amounts.
- **PG&E's 2020 ERRA Compliance:** On March 1, 2021, PG&E filed its 2020 ERRA Compliance application. The CPUC provided notice of the application in its March 18, 2021, Daily Calendar, meaning protests and responses to the application are due April 17, 2021.
- **IRP Rulemaking:** Parties filed comments in response to the February 22, 2021 ALJ Ruling that provided the results of staff's analysis on mid-term reliability and proposed a new 7,500 MW by 2025 procurement mandate that would be allocated across LSEs. A workshop was held on March 10, 2021, to further explain and discuss the analysis.
- **Ensuring Summer 2021 Reliability:** The CPUC approved D.21-03-056 at its meeting, directing IOUs to undertake a number of actions to decrease peak and net peak demand and increase peak and net peak supply in the summers of 2021 and 2022, with the costs of these actions generally recoverable through charges on all customers including CCA customers. The proceeding will remain open to consider additional party proposals for summer 2022. In addition, CAlifornians for Renewable Energy; Protect Our Communities Foundation; and California Environmental Justice Alliance, Union of Concerned Scientists, and Sierra Club filed applications for rehearing of D.21-02-028, which directed IOUs to enter into contracts and file advice letters for additional resource capacity available in summer 2021.

- **RPS Rulemaking:** The ALJs issued a Ruling granting VCE's and most other retail sellers' requests for confidentiality related to Final 2020 RPS Procurement Plans, which were filed on February 19, 2021. On March 30, 2021, the Assigned Commissioner and Assigned ALJs issued a Ruling identifying the issues and schedule for review of the draft 2021 RPS Procurement Plan, which is due June 1, 2021.
- **RA Rulemaking (2021-2022):** Parties filed comments and reply comments in March on party proposals on Tracks 3B.1, 3B.2, and 4. The Energy Division also published its report on the 2019 resource adequacy compliance year.
- **PG&E's Phase 2 GRC:** On March 29, 2021, PG&E filed a Motion for Adoption of Residential Rate Design Supplemental Settlement Agreement. Status updates filed in the proceeding indicate separate settlement agreements on economic development rates and commercial and industrial rates are expected to be filed soon. The CPUC issued a notice regarding the April virtual evidentiary hearing in this proceeding. PG&E also filed supplemental testimony on real-time pricing issues.
- **PG&E Regionalization Plan**: Staff held a workshop on PG&E's updated regionalization plan on March 3, 2021.
- **PG&E's 2019 ERRA Compliance:** On March 25, 2021, PG&E filed a Motion to reopen the record of the proceeding to correct a table in PG&E's testimony. The Motion indicates the Joint CCAs' do not oppose PG&E's requested correction.
- **PCIA Rulemaking:** No updates this month. Parties filed reply comments in response to the questions provided in Attachment A of the Amended Scoping Memo and Ruling on February 5, 2021.
- **Direct Access Rulemaking**: No updates this month. On October 16, 2020, and October 26, 2020, respectively, parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding a potential additional expansion of direct access for nonresidential customers.
- **RA Rulemaking (2019-2020):** No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.
- **Investigation into PG&E's Organization, Culture and Governance:** No updates this month. On November 24, 2020, CPUC President sent a letter to PG&E indicating that she has directed CPUC staff to conduct fact-finding to determine whether to recommend that PG&E be placed into the enhanced oversight and enforcement process.
- **Wildfire Cost Recovery Methodology Rulemaking:** No updates this month. An August PG&E Application for Rehearing remains pending regarding D.19-06-027, establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay.

## NEW: Provider of Last Resort Rulemaking

On March 25, 2021, the CPUC issued an Order Instituting Rulemaking opening this proceeding to address issues regarding the provider of last resort (POLR).

- **Background**: A POLR is the utility or other entity that has the obligation to serve all customers (e.g., PG&E is currently the POLR in VCE's territory). In 2019 the Legislature passed SB 520, which defined POLR for the first time in statute, confirmed that each IOU is the POLR in its service territory, and directed the Commission to establish a framework to allow other entities to apply and become the POLR for a specific area (a "Designated POLR").
- **Details**: This rulemaking will implement SB 520. It provides for a two-phased rulemaking so that the POLR requirements for the current POLRs can be established prior to addressing a

framework for a Designated POLR. Phase 1 will focus on the issues necessary for a comprehensive framework for the existing POLRs (IOUs). It will address POLR service requirements, cost recovery, and options to maintain GHG emission reductions in the event of an unplanned customer migration to the POLR. Phase 2 will set rules that allow a different entity (i.e., a CCA, ESP, or a third-party) to be designated as POLR, including setting the requirements and application process. Emergent issues and cross-over issues will be considered in both phases depending on the circumstances.

- **Analysis**: This proceeding could impact VCE in several ways. First, in establishing rules for existing POLRs, it will address POLR service requirements, cost allocation, and cost recovery issues should a CCA or other LSE discontinue supplying customers resulting in the need for the POLR to step in to serve those customers. Second, in setting the requirements and application process for another entity to be designated as the POLR, it could create a pathway for a CCA or other retail provider to elect to become a POLR for its service area. The preliminary questions (Appendix B to the OIR) suggest these issues will include examining topics such as CCA financial security requirements, portfolio risk and hedging, CCA deregistration, CCA mergers, and CCA insolvency.
- **Next Steps**: Comments on the OIR are due April 26, 2021, and reply comments are due on May 10, 2021.
- **Additional Information**: Order Instituting Rulemaking (March 25, 2021); Docket No. R.21-03-011.

## NEW: 2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking

On March 10, 2021, the CPUC issued an Order Instituting Rulemaking opening this proceeding to address the 2022 and 2023 Wildfire Fund Nonbypassable Charge amounts.

- **Background**: This rulemaking continues to implement AB 1054, which extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The CPUC issued D.20-12-024 in December 2020 that continues the Wildfire Non-Bypassable Charge (NBC) amount of $0.00580/kWh for January 1, 2021, through December 31, 2021. The NBC amount of 2022 and 2023 has not yet been established.
- **Details**: This rulemaking will determine the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amount.
- **Analysis**: VCE customers will pay the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amounts established in this proceeding.
- **Next Steps**: A prehearing conference, followed by the issuance of the scoping memo and ruling, is listed in the OIR as occurring in April. A proposed decision is expected in November, with the final decision in December.
- **Additional Information**: Order Instituting Rulemaking (March 10, 2021); Docket No. R.21-03-001.

## PG&E 2020 ERRA Compliance

On March 1, 2021, PG&E filed its 2020 ERRA Compliance application. The CPUC provided notice of the application in its March 18, 2021, Daily Calendar, meaning protests and responses to the application are due April 17, 2021.

- **Background**: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the preceding year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries.

- **Details**: PG&E is requesting that the CPUC find it complied with its Bundled Procurement Plan (BPP) in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources for the 2020 calendar year. It also seeks a CPUC finding that it managed its utility-owned generation (UOG) facilities reasonably, although it recommends that CPUC review of outages at Diablo Canyon Power Plant related to the Unit 2 main generator be delayed to the 2021 ERRA Compliance review. Of significance to the PCIA, PG&E is requesting the CPUC find that entries in its Portfolio Allocation Balancing Account (PABA), which trues up the above-market forecast of generation resources recovered through the PCIA with actual recorded costs and revenues, are accurate.

  PG&E's procurement costs recorded across the portfolio were $158.8 million higher than forecasted, allegedly due to higher-than-forecast RPS-eligible contracts, as offset by higher than forecast retained RPS and retained RA, as well as lower than forecast fuel costs for UOG facilities. Activity recorded in the PABA includes the following categories: Revenues from Customers, RPS Activity, RA Activity, Adopted UOG Revenue Requirements, CAISO Related Charges and Revenues, Fuel Costs, Contract Costs, GHG Costs, and Miscellaneous Costs. PG&E has redacted as confidential its 2020 actual and forecast costs for these categories, so it is unclear from the public filing what the magnitude is regarding the difference between actual and forecast costs for each category.

- **Analysis**: This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2020. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Both issues could impact the level of the PCIA in 2022.

- **Next Steps**: Protests and responses are due 30 days after this application was noticed in the CPUC's daily calendar, which occurred on March 18, 2021, resulting in an April 17, 2021 deadline. PG&E has proposed a schedule that includes a prehearing conference on May 6, 2021, CalAdvocates/intervenor testimony on July 12, 2021, and proposed and final decisions issued in Q1 2022.

- **Additional Information**: CPUC Daily Calendar Notice (March 18, 2021); Application (March 1, 2021); Docket No. A.21-03-008.

## IRP Rulemaking

On March 26, 2021, parties filed comments in response to the February 22, 2021 ALJ Ruling that provided the results of staff's analysis on mid-term reliability and proposed a new 7,500 MW by 2025 procurement mandate that would be allocated across LSEs. A workshop was held on March 10, 2021, to further explain and discuss the analysis.

- **Background**: On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016.

  The September 24 Scoping Memo and Ruling clarifies that the issues planned to be resolved in this proceeding are organized into the following tracks:

  - General IRP oversight issues: This track will consider moving from a two-year to a three-year IRP cycle, IRP filing requirements, and interagency work implementing SB 100.
  - Procurement track: The CPUC is examining LSE plans to replace Diablo Canyon capacity and has conducted an overall assessment and gap analysis to inform a procurement order that could direct LSEs to procure additional capacity (see February 22 Ruling described below). Other issues to be addressed in this track include (1) evaluation of development needs for long-duration storage, out-of-state wind, offshore wind, geothermal, and other resources with long development lead times; (2) local reliability

needs; and (3) analysis of the need for specific natural gas plants in local areas. Additional procurement requirements may also be considered.

- Preferred System Portfolio Development: The CPUC will aggregate LSE portfolios, analyze the aggregate portfolio, and adopt a PSP.
- TPP: *Completed*. D.21-02-028 transmitted portfolios to the CAISO for use in its TPP analysis.
- Reference System Portfolio Development: To the extent that a new round of RSP analysis is conducted for the next IRP cycle, this proceeding will be the venue for developing and vetting the resource assumptions associated with that analysis in preparation for the next IRP cycle.

D.20-12-044 established a backstop procurement process that would apply to LSEs that did not opt-out of self-procuring their capacity obligations under D.19-11-016. It requires LSEs to file bi-annual (due February 1 and August 1) updates of their procurement progress relative to the contractual and procurement milestones defined in the decision. After review of the compliance filings, CPUC Staff will bring a Resolution before the Commission specifying the amount of backstop procurement required for a particular IOU on behalf of each LSE for each procurement tranche (2021, 2022, and 2023).

- **Details**: The February 22 Ruling presents the results of analysis by Commission staff of the need for electric system reliability resources out to 2026, taking into consideration both the reliability issues experienced in August 2020 as well as the forthcoming retirement of Diablo Canyon. The Ruling proposes mandating that LSEs procure an additional 7,500 MW of effective capacity by 2025. Of that total, at least 1,000 MW would be required to come from geothermal resources and 1,000 MW would be required to come from long-duration storage (defined as providing 8 hours of storage or more). The Ruling would allocate individual LSE procurement requirements by calculating each LSE's load and resource balance for each year through 2026 to determine their resource shortfall, if any, and then apportioning their responsibility for the overall procurement need based on that shortfall relative to that of the other LSEs (as reported in the LSE's 2020 IRP, which is based on an LSE's existing resources and those in development as of June 30, 2020). All LSEs would be required to procure their share of additional resources (i.e., there is no option for LSEs to opt-out and have the IOUs procure on their behalf, for example), and there would be a noncompliance penalty set at the cost of new entry (CONE), plus the LSE would be responsible for the costs of backstop procurement. For compliance purposes, eligible resources would be those that are contracted and approved by VCE's board after June 30, 2020. However, a compliant resource may not also be used to satisfy an LSE's procurement obligation under D.19-11-016.
- **Analysis**: The Ruling's proposal for a new 7,500 MW by 2025 procurement mandate could impose a new procurement obligation and associated compliance obligations on VCE, including procurement of long-duration storage and geothermal resources. D.21-02-028 could impact future transmission development and access to and availability of new resources.
- **Next Steps**: The schedule is as follows:
    - General IRP oversight issues: A Proposed Decision on moving from two-year to three-year IRP cycle is anticipated to be issued soon.
    - Procurement track: Reply comments on the February 22 Ruling proposing a 7,500 MW by 2025 procurement mandate are due April 9, 2021.
    - Preferred System Portfolio Development: A workshop on a reconciled portfolio aggregation of all LSE IRPs is anticipated for Q1 2021.
- **Additional Information**: Ruling on staff reliability analysis and 7,500 MW by 2025 procurement mandate (February 22, 2021); D.21-02-028 recommending portfolios for CAISO's 2021-2022 TPP (February 17, 2021); D.20-12-044 establishing a backstop procurement process (December 22, 2020); Ruling requesting comments on IRP evaluation (December 8, 2020); Ruling providing Staff

Proposal on resource procurement framework (November 19, 2020); Email Ruling requesting comments on individual LSE IRPs (October 9, 2020); Scoping Memo and Ruling (September 24, 2020); Resolution E-5080 (August 7, 2020); Ruling on IRP cycle and schedule (June 15, 2020); Ruling on backstop procurement and cost allocation mechanisms (June 5, 2020); Order Instituting Rulemaking (May 14, 2020); Docket No. R.20-05-003.

## Ensuring Summer 2021 Reliability

On March 25, 2021, the CPUC approved D.21-03-056 at its meeting, directing IOUs to undertake a number of actions to decrease peak and net peak demand and increase peak and net peak supply in the summers of 2021 and 2022, with the costs of these actions generally recoverable through charges on all customers including CCA customers. The proceeding will remain open to consider additional party proposals for summer 2022. In addition, California Environmental Justice Alliance, Union of Concerned Scientists, Sierra Club filed an application for rehearing of D.21-02-028, which directed IOUs to enter into contracts and file advice letters for additional resource capacity available in summer 2021, on March 12, 2021, and CAlifornians for Renewable Energy and Protect Our Communities Foundation filed applications for rehearing of D.21-02-028 on March 19, 2021.

- **Background**: CAISO experienced rolling blackouts (Stage 3 Emergency) on August 14, 2020 and August 15, 2020 when a heatwave struck the Western U.S. and there was insufficient available supply to meet high demand. The OIR was issued to ensure reliable electric service in the event that an extreme heat storm occurs in the summer of 2021.

  The Scoping Memo and Ruling identified two primary issues as in scope: how to (1) increase energy supply and (2) decrease demand during the peak demand and net demand peak hours in the event that a heat storm similar to the August 2020 storm occurs in the summer of 2021.

  VCE's opening testimony provided its proposal for an Agricultural AutoDR Demand Flexibility Pilot, which could made available to customers on irrigation pumping tariffs.

- **Details**: D.21-03-056 institutes modifications to the planning reserve margin (PRM), effectively increasing the PRM beginning summer 2021 from 15% to 17.5%. All LSEs would continue to meet their 15% system RA PRM requirement, and the IOUs only would be directed to target a minimum of 2.5% of incremental resources that are available at net peak. For 2021, this results in a minimum target of 450 MW for PG&E, 450 MW for SCE, and 100 MW for SDG&E. The net costs associated with this incremental procurement would be shared by all customers (including CCA customers) in each IOU's service territory.

  It also authorizes the IOUs to implement a Flex Alert paid media campaign program to encourage ratepayers to voluntarily reduce demand during moments of a stressed grid and adopts modifications and expansions to the Critical Peak Pricing (CPP) program, to be in place for the summer of 2021. It directs PG&E, SCE, and SDG&E to host a workshop on non-IOU CPP programs by April 7, 2021, to facilitate a peer knowledge exchange on the topic for summer 2021, identify barriers and solutions to non-IOU LSE program expansion, and consider alternative ways for IOUs and CCAs to coordinate to encourage CCA customer participation in other load shedding programs. The CPUC strongly encourages CCAs and ESPs to take steps to launch or expand existing non-IOU CPP programs by summer 2021 and 2022.

  D.21-03-056 also establishes an Emergency Load Reduction Program (ELRP) to provide emergency load reduction and serve as an insurance policy against the need for future rotating outages. The initial duration of the ELRP pilot program would be five years, 2021-2025. After-the-fact pay-for-performance would be made at a prefixed energy-only ELRP Compensation Rate ($1,000/MWh for up to an annual 60-hour limit) applied to incremental load reduction. For PG&E, the budget caps are $3.9 million for administration and $28.6 million for customer compensation.

- **Analysis**: D.21-03-056 directs PG&E to undertake a number of actions to reduce demand and increase supply in the summer of 2021 that will result in cost increases for all customers, including VCE customers. It did not address VCE's proposed Agricultural AutoDR Demand

Flexibility Pilot, but the proceeding was kept open to consider proposals for summer 2022 and it included revised language on CCA and IOU coordination to encourage CCA customer participation in load shedding programs. In addition, the decision directs VCE and other LSEs to make a compliance filing on April 15 regarding RA during July, August, and September 2021.

- **Next Steps**: A workshop will be hosted by IOUs by April 7, 2021, as directed by D.21-03-056. All LSEs are required to provide Energy Division non-binding month-ahead RA filings for July, August and September no later than April 15, 2021.
- **Additional Information**: D.21-03-056 (approved March 25, 2021); CAlifornians for Renewable Energy Application for Rehearing of D.21-02-028 (March 19, 2021); Protect Our Communities Foundation Application for Rehearing of D.21-02-028 (March 19, 2021); California Environmental Justice Alliance, Union of Concerned Scientists, and Sierra Club Application for Rehearing of D.21-02-028 (March 12, 2021); D.21-02-028 directing IOUs to seek additional capacity for summer 2021 (February 17, 2021); PG&E AL 6089-E and AL 6088-E on summer 2021 capacity procurement (February 16, 2021) Assigned Commissioner's Ruling directing IOU contracts for additional capacity (December 28, 2020); Scoping Memo and Ruling (December 21, 2020); ALJ Ruling and Staff Proposal (December 18, 2020); Order Instituting Rulemaking (November 20, 2020); Docket No. R.20-11-003.

## RPS Rulemaking

On March 22, 2021, the ALJs issued a Ruling granting VCE's and most other retail sellers' requests for confidentiality related to Final 2020 RPS Procurement Plans, which were filed on February 19, 2021. On March 30, 2021, the Assigned Commissioner and Assigned ALJs issued a Ruling identifying the issues and schedule for review of the draft 2021 RPS Procurement Plan.

- **Background**: This proceeding addresses ongoing RPS issues. VCE submitted its Draft 2020 RPS Procurement Plan on July 6, 2020, and its 2019 RPS Compliance Report on August 3, 2020.

  Staff's Proposed Framework for integrating RPS Procurement Plan requirements into the IRP proceeding uses a two-phased approach that makes a relatively minor change to RPS reporting in the current IRP cycle, while fully integrating all elements of RPS Procurement Plans into the next IRP cycle, proposed to commence in the 2023 calendar year (instead of 2022, under the current two-year cycle, although the issue of a two-year versus three-year cycle is not discussed).

  D.21-01-005, issued in January 2021, praised VCE's draft 2020 RPS Procurement Plan, pointing to it as a "best example" or "best practice" in seven sections of the Plan for other LSEs to emulate in their updates. D.21-01-005 also identified several areas for VCE and most other LSEs to update or modify in its Final 2020 RPS Procurement Plan, which VCE completed through its February 19, 2021 submission.
- **Details**: The March 30 Ruling sets a June 1, 2021, deadline for retail sellers to submit their draft 2021 RPS Procurement Plans and establishes a schedule for the Commission's review of these plans. This Ruling follows the format of past Rulings initiating the annual RPS procurement process, with refinements to incorporate lessons learned from previous RPS Plan submissions and the changes due to the current market and regulatory conditions.

  The March 22 Ruling granting the confidentiality requests was procedural in nature and did not contain additional substantive provisions or proposals.

  A Joint Petition for Modification of D.13-05-034, filed by PG&E, SCE, and SDG&E in February, is currently pending in an old RPS Rulemaking (R.11-05-005). If the petition is granted, VCE customers would have to pay for Renewable Market Adjusting Tariff (ReMAT) contracts that PG&E enters into through the non-bypassable Public Policy Program (PPP) charge, whereas currently only bundled PG&E customers pay these costs.

- **Analysis**: The submission of the Final 2020 RPS Procurement Plan completes the 2020 RPS Plan process. Based on prior years, the ALJ is expected to issue a ruling in spring of 2021 that provides the requirements for the 2021 RPS Procurement Plan, which is expected to be due this summer. The 2020 RPS Compliance Report will be due August 1, 2021.

  Other issues to be addressed in this proceeding could further impact future RPS compliance obligations, as well as cost recovery related to utility RPS-related procurements.

- **Next Steps**: A PD aligning RPS and IRP filings is anticipated to be issued soon, followed by an opportunity for comments and reply comments. The 2021 RPS Procurement Plan is due June 1, 2021, and the 2020 RPS Compliance Report is due August 1, 2021. Energy Division Staff will also hold a webinar to discuss any outstanding questions from retail sellers related to the templates and 2021 RPS Procurement Plans requirements by May 10, 2021. Comments on the draft 2021 RPS Procurement Plans are due July 1, 2021.

- **Additional Information**: Ruling establishing issues and schedule for 2021 RPS Procurement Plans (March 30, 2021); Joint Petition for Modification of D.13-05-034 (February 11, 2021); D.21-01-005 directing retail sellers to file final 2020 RPS Procurement Plans (January 20, 2021); Order Granting Rehearing of D.17-08-021 (November 23, 2020); D.20-10-005 resuming and modifying the ReMAT program (October 16, 2020); D.20-09-022 on new CCA 2019 RPS Procurement Plans (approved at CPUC's September 24, 2020 meeting); Ruling on Staff proposal aligning RPS/IRP filings (September 18, 2020); D.20-08-043 resuming and modifying the BioMAT program (September 1, 2020); VCE Motion to Update its 2020 RPS Procurement Plan (August 12, 2020); Assigned Commissioner Ruling (ACR) establishing 2020 RPS Procurement Plan requirements (May 6, 2020); D.20-02-040 correcting D.19-12-042 on 2019 RPS Procurement Plans (February 21, 2020); Ruling on RPS confidentiality and transparency issues (February 27, 2020); D.19-12-042 on 2019 RPS Procurement Plans (December 30, 2019); D.19-06-023 on implementing SB 100 (May 22, 2019); D.19-02-007 (February 28, 2019); Scoping Ruling (November 9, 2018); Docket No. R.18-07-003.

## RA Rulemaking (2021-2022)

Parties filed comments and reply comments in March on Track 3B.1, 3B.2, and 4 proposals. The Energy Division published its 2019 report on resource adequacy on March 16, 2021.

- **Background**: This proceeding is divided into 4 tracks. The first two tracks have concluded, and the proceeding is now focused on Track 3B.1, 3B.2, and Track 4 issues, described in more detail below. Track 3B.1 is considering incentives for LSEs that are deficient in year-ahead RA filings, refinements to the MCC buckets adopted in D.20-06-031, and other time-sensitive issues. Track 3B.2 includes examination of the broader RA capacity structure to address energy attributes and hourly capacity requirements. Track 4 is considering the 2022 program year requirements for System and Flexible RA, and the 2022-2024 Local RA requirements.

  D.20-12-006 addressed the issues of the financial credit mechanism and competitive neutrality rules for the CPEs. It approved CalCCA's proposed "Option 2," with modifications, which allows the CPE to evaluate the shown resource alongside bid resources to assess the effectiveness of the portfolio. The financial credit mechanism will apply only to new preferred or energy storage resources (i.e., non-fossil-based resources) with a contract executed on or after June 17, 2020. It also adopted PG&E's competitive neutrality proposal for PG&E's service territory. Finally, D.20-12-006 found that the Local Capacity Requirements Working Group should continue to discuss recommendations and develop solutions for consideration in CAISO's 2022 LCR process.

- **Details**: According to the 2019 Resource Adequacy report, in 2019, CPUC-jurisdictional LSEs were deficient by 288 MW in meeting their peak load RA obligations. The RA obligation for September totaled 47,882 MW and LSEs collectively procured 47,594 MW. However, the actual peak load occurred in August 2019. The actual peak load for CAISO's Balancing Authority Area was 44,148 MW and occurred at 6 pm on August 15, 2019. In total, the Commission issued 10 citations for violations related to compliance year 2019 for a total of $9.6 million.

- **Analysis**: Regulatory developments under consideration in this proceeding could have a significant impact on VCE's capacity procurement obligations and RA compliance filing requirements. A broad array of changes to the RA construct are under consideration, including the consideration of hourly capacity requirements in light of the increasing deployment of use-limited resources; modifications to maximum cumulative capacity buckets and whether the RA program should *cap* use-limited and preferred resources such as wind and solar; the potential expansion of multi-year local forward RA to system or flexible resources; RA penalties and waivers; and Marginal ELCC counting conventions for solar (including removal of RA value for solar-only resources for projects with CODs after December 31, 2020 that are not under contract as of the date of the Track 4 decision), wind and hybrid resources. The resolution of these issues could impact the extent to which VCE is permitted to rely on use-limited resources such as solar and wind to meet its RA obligations, the amount of RA that is credited to these types of resources, and what penalties (and waivers) would apply should there be a deficiency in meeting an RA requirement.
- **Next Steps**: One or more proposed decisions on Tracks 3B.1, 3B.2, and 4 are anticipated to be issued in May 2021.
- **Additional Information**: 2019 Resource Adequacy Report (March 19, 2021); Ruling providing Energy Division's Track 3B.2 proposal (March 17, 2021); Ruling providing Energy Division's Track 4 proposal (February 1, 2021); Scoping Memo and Ruling for Track 3B and Track 4 (December 11, 2020); D.20-12-006 on Track 3.A issues (December 4, 2020); Amended Scoping Memo on Track 3 (July 7, 2020); D.20-06-031 on local and flexible RA requirements and RA program refinements (June 30, 2020); 2021 Final Flexible Capacity Needs Assessment (May 15, 2020); 2021 Final Local Capacity Technical Study (May 1, 2020); Scoping Memo and Ruling (January 22, 2020); Order Instituting Rulemaking (November 13, 2019); Docket No. R.19-11-009.

## PG&E's Phase 2 GRC

On March 29, 2021, PG&E filed a Motion for Adoption of Residential Rate Design Supplemental Settlement Agreement. Status updates filed in the proceeding indicate separate settlement agreements on economic development rates and commercial and industrial rates are also expected to be filed soon. On March 25, 2021, the CPUC issued a notice regarding the April virtual evidentiary hearing in this proceeding. PG&E also filed supplemental testimony on real-time pricing (RTP) issues on March 29, 2021.

- **Background**: PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. PG&E's pending Phase 1 GRC (filed in December 2018 via a separate proceeding) will set the revenue requirement that will carry through to the rates ultimately adopted in this proceeding.

  In this proceeding, PG&E seeks modifications to its rates for distribution, generation, and its public purpose program (PPP) non-bypassable charge. PG&E proposes to implement a plan to move all customer classes to their full cost of service over a six-year period (the first three years of which are covered by this GRC Phase 2) via incremental annual steps. PG&E proposes to use marginal costs for purposes of revenue allocation and to adjust distribution one-sixth of the way to full cost of service each year over a six-year transition period.

  Of note, PG&E is proposing changes to the DA/CCA event-based fees that were not updated in the 2017 Phase 2 GRC proceeding. In addition, PG&E proposes to remove the PCIA revenue from bundled generation revenue and allocate that cost separately to bundled customers, collecting the PCIA from bundled customers on a non-time differentiated, per-kWh basis (i.e., the same way it is collected from DA/CCA customers). PG&E will continue to display the PCIA with other generation charges on customer bills, but will unbundle the PCIA as part of unbundled charges in each rate schedule.

  Joint CCAs' testimony recommended that:

- PG&E present class- and vintage-specific PCIA rates on individual rate schedules, consistent with other NBCs for both bundled and unbundled customers.
- The CPUC not allow PG&E to offer Economic Development Rate Generation rates below PG&E's Marginal Generation Cost of Service.
- PG&E's E-ELEC offering should be analyzed further and refined in a proceeding that allows more detailed consideration in rate making.
- The Commission adopt PG&E's proposal regarding minimum time-of-use rates such that no proposed retail rate is below the PCIA.

- **Details**: As of the date of this memo, the details of the anticipated settlement agreements had not been made public, except for those related to the Residential Rate Design Supplemental Settlement Agreement filed March 29, 2021. The Residential Rate Design Supplemental Settlement Agreement resolves all residential rate design issues in the proceeding, including:
  - The PCIA will be identified for bundled customers as a flat rate (not differentiated by season or TOU period).
  - PG&E's proposal for tiered rate levels for Schedule E-1 should be approved.
  - PG&E's proposal to keep the Schedule E-TOU-C (*i.e.,* default residential TOU rate) peak versus off-peak price differentials at their current levels until 12 months after the last cohort of PG&E's customers are migrated to default TOU rates should be approved, and future changes over the following three years are specified in the Settlement Agreement.
  - PG&E's Schedule E-ELEC should be approved, with the fixed charge set at $15 per customer per month. Since this new E-ELEC rate requires structural changes to PG&E's billing system, PG&E anticipates that it would take at least twelve months after a final decision is issued in this proceeding before it could be programmed, tested, and implemented.
  - PG&E will host two workshops to discuss the collection of key information regarding customers who engage in electrification efforts, and the data collected will be provided to interested stakeholders and the Commission as part of a formal Measurement and Evaluation (M&E) study.
  - Within one year after a final decision is issued in PG&E's 2020 GRC Phase II proceeding, PG&E will conduct a workshop on the topic of the treatment of net energy metering customer load in baseline quantity calculations.

  PG&E's March 29, 2021 supplemental testimony provides the policy background and context for PG&E's proposal for an opt-in RTP pilot for Commercial and Industrial (C&I) customers, and proposed dynamic pricing rate design and preferences research for the Residential and Agricultural customer classes. PG&E anticipates the C&I RTP Pilot rate would be available by the summer of 2023 and proposes a pilot duration of 24 months. PG&E also proposes to conduct rate design and preferences research and further benchmarking for the Agricultural and Residential customer classes, asserting it is premature to propose RTP rates for these customers and that more information is needed regarding Agricultural and Residential customer interest and ability to respond to an RTP rate versus other dynamic rate structures.

- **Analysis**: This proceeding will not impact the transparency between a bundled and unbundled customer's bills because of the Working Group 1 decision in the PCIA rulemaking, though the JCCAs recommend in testimony that more transparency be reflected in utility tariffs. However, it will affect the allocation of PG&E's revenue requirements among VCE's different rate classes. It will also affect distribution and PPP charges paid by VCE customers to PG&E. Further, PG&E includes a cost-of-service study the purpose of which is to establish the groundwork for separating net metering customers into a separate customer class in the utility's next rate case. If PG&E's proposed CCA fee revisions are adopted, it could increase the cost VCE pays to PG&E for various services, to the extent VCE uses these services.

- **Next Steps**: Intervenor responsive testimony regarding RTP issues is due May 28, 2021, and rebuttal testimony is due July 30, 2021. An evidentiary hearing on non-RTP issues is scheduled for April 8-22, 2021, and the evidentiary hearing on RTP issues will occur in September 2021. Opening and reply briefs, respectively, on non-RTP issues are due May 20, 2021, and June 10, 2021. A CPUC decision on non-RTP issues is anticipated for October 2021, and a decision on RTP issues is anticipated in May 2022.
- **Additional Information**: Motion to adopt residential rate design settlement (March 29, 2021); Notice of Virtual Evidentiary Hearing (March 25, 2021); Scoping Memo and Ruling (February 16, 2021); Ruling bifurcating RTP issues into separate track (February 2, 2021); PG&E Status Report (December 18, 2020); D.20-09-021 on EUS budget (September 28, 2020); Ruling extending procedural schedule (July 13, 2020); Exhibit (PG&E-5) (May 15, 2020); Scoping Memo and Ruling (February 10, 2020); Application, Exhibit (PG&E-1): Overview and Policy, Exhibit (PG&E-2): Cost of Service, Exhibit (PG&E-3): Revenue Allocation, Rate Design and Rate Programs, and Exhibit (PG&E-4): Appendices (November 22, 2019); Docket No. A.19-11-019.

## PG&E Regionalization Plan

Staff held a workshop on PG&E's updated regionalization plan on March 3, 2021.

- **Background**: PG&E was directed to file a regionalization proposal as a condition of CPUC approval of its Plan of Reorganization in I.19-09-016. On June 30, 2020, PG&E filed its regionalization proposal, which describes how it plans to reorganize operations into new regions. PG&E proposes to divide its service area into five new regions. PG&E will appoint a Regional Vice President by June 2021 to lead each region, along with Regional Safety Directors to lead its safety efforts in each region. The new regions would include five functional groups that report to the Regional Vice President encompassing various functions including: (1) Customer Field Operations, (2) Local Electric Maintenance and Construction, (3) Local Gas M&C, (4) Regional Planning and Coordination, and (5) Community and Customer Engagement. Other functions will remain centralized, such as electric and gas operations, risk management, enterprise health and safety, the majority of existing Customer Care and regulatory and external affairs, supply, power generation, human resources, finance, and general counsel.

  In August, parties filed protests and responses to PG&E's application. Of note, South San Joaquin Irrigation District filed a Protest arguing that PG&E's regionalization effort should not create a moratorium or interfere with municipalization efforts. In addition, five CCAs filed responses or protests to PG&E's application, with MCE and EBCE filing protests and City of San Jose, City and County of San Francisco, and Pioneer Community Energy filing responses. CCA responses/protests sought more information on the implications of regionalization on CCA customers, CCA operations, and CCA-PG&E coordination; PG&E's overarching purpose, goals, and metrics to judge success of regionalization; the delineation between centralized and decentralized functions in PG&E's application; and budgets and cost recovery related to regionalization, among other issues. CCAs also identified various concerns specific to their CCAs (e.g., EBCE's and MCE's service areas would both be split across two PG&E regions; SJCE expressed concern with its service area being assigned to the Central Coast region; Pioneer expressed concern that it would be the only CCA in its region, which would be the only region not to be "anchored" by an urban area).
- **Details**: PG&E submitted its updated regionalization proposal on February 26, 2021. In response to feedback, PG&E modified its five regions (renamed North Coast, North Valley & Sierra, Bay Area, South Bay & Central Coast, and Central Valley), including moving Yolo County from Region 1 to Region 2 (North Valley & Sierra), where it would be grouped together with the following counties: Colusa, El Dorado, Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Solano, Sutter, Tehama, and Yuba. PG&E also provided more information on the new leadership positions that it is creating and its "Lean Operating System" implementation. Currently, PG&E is in Phase 1 of 3 of its regionalization plan, which is focused on refining regional

boundaries, establishing roles and governance for regional leadership, and recruiting and hiring for those positions. In Phase 2 (second half of 2021 through 2022), PG&E will establish and implement the regional boundaries and provide the resources and staffing to support it. In Phase 3 (2023 and after), PG&E will continue to reassess, refine and collaborate with other functional groups to improve efficiencies, safety, reliability and customer service.

- **Analysis**: The implications of PG&E's regionalization plan on CCA operations, customers, and costs are largely unclear based on the information presented in PG&E's application and updated application. PG&E's regionalization plan could impact PG&E's responsiveness and management of local government relations and local and regional issues, such as safety, that directly impact VCE customers. It could also impact municipalization efforts, although this issue has not been explicitly addressed and remains unclear at this time. As part of Region 2, VCE would be grouped with several northern counties in central and eastern California.
- **Next Steps**: Comments on PG&E's updated regionalization plan are due April 2, 2021, and reply comments are due April 9, 2021. PG&E must engage its Regional Vice Presidents and Regional Safety Directors by June 1, 2021.
- **Additional Information**: PG&E Updated Regionalization Proposal (February 26, 2021); Ruling modifying procedural schedule (December 23, 2020); Scoping Memo and Ruling (October 2, 2020); Application (June 30, 2020); A.20-06-011.

## PG&E's 2019 ERRA Compliance

On March 25, 2021, PG&E filed a Motion to reopen the record of the proceeding to correct a table in PG&E's testimony.

- **Background**: ERRA compliance review proceedings review the utility's compliance in the preceding year regarding energy resource contract administration, least-cost dispatch, fuel procurement, and the PABA balancing account (which determines the true up values for the PCIA each year). In its 2019 ERRA compliance application, PG&E requested that the CPUC find that its PABA entries for 2019 were accurate, it complied with its Bundled Procurement Plan in 2019 in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, RA sales, and least-cost dispatch of electric generation resources. PG&E also requests that the CPUC find that during the record period PG&E managed its utility-owned generation facilities reasonably. Finally, PG&E requests cost recovery of revenue requirements totaling about $4.0 million for Diablo Canyon seismic study costs.

  The Joint CCAs' testimony identified $175.4 million in net reductions to the 2019 PABA balance that should be made, excluding interest. The Joint CCAs argue this amount should be credited back to customers. PG&E's rebuttal testimony stated it will make all but $33.6 million of those adjustments as part of its August 2020 accounting close.

  On October 22, 2020, PG&E, Joint CCAs, and Cal Advocates filed a Joint Motion to Adopt Settlement Agreement. The Settlement Agreement resolves all but two of the disputed issues in Phase I of the proceeding. PG&E agreed with certain accounting errors identified by the Joint CCAs. PG&E also committed to provide additional, specific information requested by the Joint CCAs simultaneous with its ERRA Compliance applications and simplify the presentation of that information, resolving the Joint CCAs concern with transparency of the PG&E data supporting entries to the ERRA, PABA and related balancing accounts. PG&E and the Joint CCAs agreed to engage in discussions about the approach to Resource Adequacy solicitations governed by Appendix S of PG&E's 2014 Bundled Procurement Plan. Finally, PG&E agreed to rebill all commercial and industrial CCA customers assigned an incorrect vintage.
- **Details**: The sole purpose of PG&E's March 25, 2021 Motion is to correct an error in one table in PG&E's prepared testimony. PG&E reported the 2019 PG&E gas deliveries by facility or tolling agreement but did not state the total costs. (The specific updates are redacted, so the magnitude

of the impact of the changes is unclear based on the public version of the filing.) The Joint CCAs have indicated that they do not opposed PG&E's requested correction.

- **Analysis**: This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2019. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Efforts from the Joint CCAs to date will reduce the level of the PCIA for VCE's customers in 2021 and/or 2022. The two remaining issues not covered by the Settlement Agreement are (1) the request in PG&E's rebuttal testimony to reverse the $92.9 million adjustment it made in response to D.20-02-047 to its PABA regarding the amount of RPS energy the utility retained to serve its bundled customers in 2019; and (2) the utility's decision not to re-vintage four RPS contracts renegotiated during 2019.
- **Next Steps**: A proposed decision is anticipated to be issued soon. The schedule for Phase II of this proceeding has not been issued yet.
- **Additional Information**: PG&E Motion to update table (March 25, 2021); Joint Motion to Adopt Settlement Agreement (October 22, 2020); Ruling modifying extending deadline for briefs and reply briefs (October 12, 2020); Amended Scoping Memo and Ruling (August 14, 2020); Scoping Memo and Ruling (June 19, 2020); PG&E's Application and Testimony (February 28, 2020); Docket No. A.20-02-009.

## PCIA Rulemaking

No updates this month. Parties filed reply comments in response to the questions provided in Attachment A of the Amended Scoping Memo and Ruling on February 5, 2021.

- **Background**: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity. In the Joint IOUs' PFM of D.18-10-019 in this proceeding, filed concurrently with a PFM of D.17-08-026 in R.02-01-011, the Joint Utilities requested changes to the calculations for applying line losses in the PCIA calculations. First, the Joint IOUs argued that the current formula incorrectly applies line loss adjustments to the RA component of the PCIA calculation. Second, the Joint IOUs argued that the PCIA Template is inconsistent it its application of line losses with respect to the calculation of energy market value. The net impact of these two issues, according to the Joint Utilities, is an overstated forecast of portfolio market value with all customers initially underpaying the PCIA.

  Phase 2 relied primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

  D.20-08-004, in response to the recommendations of Working Group 2, (1) adopted the consensus framework of PCIA prepayment agreements; (2) adopted the consensus guiding principles, except for one principle regarding partial payments; (3) adopted evaluation criteria for prepayment agreements; (4) did not adopt any proposed prepayment concepts; and (5) clarified that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

  The CPUC has not yet issued a Proposed Decision regarding Working Group 3.
- **Details**: The Amended Scoping Memo and Ruling added four issues to the scope of Phase 2 of this proceeding. CalCCA, direct access providers, CalAdvocates, TURN, and the utilities responded, as follows:

- *Should the Commission remove or modify the PCIA cap?* No party opposed removing the rate cap.
- *Should the Commission modify deadlines or requirements of ERRA and PCIA related submittals and reports in order to increase time for parties to review PCIA data and to facilitate timely implementation of decisions in the ERRA proceedings?* CalCCA and the utilities proposed competing modifications to allow more time for the ERRA forecast proceeding.
- *Should the Commission adopt a methodology for crediting or charging customers who depart from the utility service during an amortization period and who are responsible for a balance in the PCIA Undercollection Balancing Account, the Energy Resource Recovery Account, or any other bundled generation account?* Both CalCCA and the utilities agreed such a mechanism should be developed, and both pointed to existing practices providing for such credits or charges.
- *Should the Commission consider any other changes necessary to ensure efficient implementation of PCIA issues within ERRA proceedings?* The utilities proposed a netting treatment used by SCE be adopted more broadly to avoid recurring ERRA trigger filings as well as the development of a REC tracking framework to track Retained RPS on a going-forward basis. CalCCA recommended the development of a non-docket specific non-disclosure agreement to increase transparency and, in turn, CCAs' ability to forecast where the PCIA is heading based on utility-specific (and currently confidential) data.

- **Analysis**: The issues added to the scope of this proceeding include the possibility of eliminating the PCIA cap, while increasing transparency and data access that could facilitate the review of the PCIA rates in ERRA forecast proceedings.
- **Next Steps**: A PD is anticipated to be issued in Q2 2021.
- **Additional Information**: Amended Scoping Memo and Ruling (December 16, 2020); CalCCA/DACC/AReM Protest of PG&E AL 5973-E (November 2, 2020); PG&E AL 5973-E (October 12, 2020); CalCCA/DACC Response to Joint IOU AL on D.20-03-019 (September 21, 2020); Joint IOUs PFM of D.18-10-019 (August 7, 2020); D.20-08-004 on Working Group 2 PCIA Prepayment (August 6, 2020); D.20-06-032 denying PFM of D.18-07-009 (July 3, 2020); D.20-03-019 on departing load forecast and presentation of the PCIA (April 6, 2020); Ruling modifying procedural schedule for working group 3 (January 22, 2020); D.20-01-030 denying rehearing of D.18-10-019 as modified (January 21, 2020); D.19-10-001 (October 17, 2019); Phase 2 Scoping Memo and Ruling (February 1, 2019); D.18-10-019 Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); D.18-09-013 Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. R.17-06-026.

## Direct Access Rulemaking

No updates this month. On October 16, 2020, and October 26, 2020, respectively, parties filed comments and replies in response to the ALJ Ruling providing a Staff Report and recommendation to the Legislature regarding a potential additional expansion of direct access (DA) for nonresidential customers.

- **Background**: In Phase 1 of this proceeding, the CPUC allocated the additional 4,000 GWh of direct access load required by SB 237 (2018, Hertzberg) among the three IOU territories with implementation to begin January 1, 2021.

  In Phase 2, the CPUC is addressing the SB 237 mandate requiring the CPUC to, by June 1, 2020, provide recommendations to the Legislature on "implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory." The Commission is required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies.

- **Details**: The September 28, 2020 Ruling attached a Staff Report constituting the draft CPUC recommendations to the Legislature required by SB 237. The Staff Report recommends that the Legislature:

    - Not make a determination as to whether to further expand DA until at least 2024, after the conclusion of the 2021-24 RPS compliance period and the fulfillment of procurement ordered by D.19-11-016.

    - Condition any further DA expansion on the performance of Energy Service Providers (ESPs) with respect to IRP, RPS and RA requirements through 2024.

    - Make any further DA expansion in increments of 10% of nonresidential load per year, conditioned on ESP ongoing compliance with IRP, RPS and RA requirements.

    - "[C]onsider the CPUC's authority in allowing CCAs to recover the costs of investments that are stranded because of unforeseen load departure to address these potential impacts."

    - "Amend P.U. Code Section 949.25 to provide the CPUC with the authority to revoke ESP licenses and CCA registration for repeated non-compliance with [RA], RPS or IRP requirements."

  CalCCA's comments argued that the CPUC should add a condition for reopening DA that will foster attainment of state goals and ensure competitive neutrality for all LSEs. CalCCA recommended establishing a Phase 3, Track 1 process for further development of DA reopening conditions, including competitively neutral switching rules, rules governing CCA stranded cost recovery, clear compliance metrics, and ESP transparency measures. Furthermore, CalCCA recommended establishing a Phase 3, Track 2 to be implemented following the issuance of 2021-2024 Renewable Portfolio Standard (RPS) compliance reports to assess readiness for DA reopening.

  ESPs argued against delaying a Legislative determination on further DA reopening, for a faster pace of DA reopening, and that access to additional load should depend on the compliance of each ESP, rather than compliance of all ESPs. Both DA advocates and IOUs opposed stranded asset recovery by CCAs.

- **Analysis**: This proceeding will impact the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California, including a potential lifting of the existing cap on nonresidential DA transactions altogether. Further expansion of DA in California could result in non-residential customer departures from VCE and make it more difficult for VCE to forecast load and conduct resource planning. CalCCA has argued that further expansion of nonresidential DA is likely to adversely impact attainment of the state's environmental and reliability goals and will result in cost-shifting to both bundled and CCA customers. The Staff report recognizes this concern and recommends that if DA is further expanded, the Legislature consider permitting CCAs to recover stranded costs from departing DA customers. The Staff report also recommends the Legislature amend the statute to allow the CPUC to revoke both ESP licenses and CCA registration for repeated non-compliance of RA, RPS, or IRP requirements.

- **Next Steps**: A proposed decision is anticipated to be issued next.

- **Additional Information**: Ruling and Staff Report (September 28, 2020); Amended Scoping Memo and Ruling adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. R.19-03-009; *see also* SB 237.

## RA Rulemaking (2019-2020)

No updates this month. Two applications for rehearing remain the only outstanding items to be addressed in this proceeding, which is now closed.

- **Background**: This proceeding had three tracks, which have now concluded. Track 1 addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program. D.19-10-020 purported to affirm existing RA rules regarding imports, but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market.

  In Track 2, the CPUC previously adopted multi-year Local RA requirements and initially declined to adopt a central buyer mechanism (D.19-02-022 issued March 4, 2019).

  The second Track 2 Decision, D.20-06-002, adopted implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. The Decision rejected a settlement agreement between CalCCA and seven other parties that would have created a residual central buyer structure (and did not specify the identity of the central buyer) and a multi-year requirements for system and flexible RA. Under D.20-06-002, if an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. A competitive solicitation (RFO) process will be used by the CPEs to procure RA products. Costs incurred by the CPE will be allocated ex post based on load share, using the CAM mechanism. D.20-06-002 also established a Working Group (co-led by CalCCA) to address: (a) the development of an local capacity requirements reduction crediting mechanism, (b) existing local capacity resource contracts (including gas), and (c) incorporating qualitative and possible quantitative criteria into the RFO evaluation process to ensure that gas resources are not selected based only on modest cost differences.

  In Track 3, D.19-06-026 adopted CAISO's recommended 2020-2022 Local Capacity Requirements and CAISO's 2020 Flexible Capacity Requirements and made no changes to the System capacity requirements. It established an IOU load data sharing requirement, whereby each non-IOU LSE (e.g., CCAs) will annually request data by January 15 and the IOU will be required to provide it by March 1. It also adopted a "Binding Load Forecast" process such that an LSE's initial load forecast (with CEC load migration and plausibility adjustments based on certain threshold amounts and revisions taken into account) becoming a binding obligation of that LSE, regardless of additional changes in an LSE's implementation to new customers.

  On October 30, 2019, CalCCA filed a PFM of D.19-06-026, seeking the creation of an RA waiver process in 2020 for system and flexible RA obligations.

  **Details**: The only two remaining items to be addressed in this proceeding are two applications for rehearing filed by Western Power Trading Forum (WPTF). First, on July 17, 2020, WPTF filed an Application for Rehearing of D.20-06-002, the Track 2 Decision creating a multi-year central procurement regime for local RA capacity. It requested rehearing and reconsideration of the rejected settlement agreement between WPTF, CalCCA, and other parties, arguing that D.20-06-002 will discourage the procurement of local resources by individual LSEs, discriminates against natural gas resources while increasing the need for CAISO backstop procurement, may undermine reliability by making it more difficult to integrate renewables with the larger western grid, and creates a "sale for resale" procurement construct that could place it under FERC's jurisdiction as a wholesale, rather than a retail, transaction.

  Second, on August 5, 2020, WPTF filed an Application for Rehearing of D.20-06-028 with respect to the self-scheduling requirements for non-resource specific RA imports.

- **Analysis**: D.20-06-002 established a central procurement entity and mostly resolved the central buyer issues, although several details are being refined through a Working Group. Moving to a central procurement entity beginning for the 2023 RA compliance year will impact VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework. Eventually, it will eliminate the need for monthly local RA showings and associated penalties and/or waiver requests from individual LSEs, but it also eliminates VCE's autonomy with regard to local RA procurement and places it in the hands of PG&E.

  The Track 1 Decision on RA imports most directly impacted LSEs relying on RA imports to meet their RA obligations by increasing the difficulty of procuring such RA in the future.

- **Next Steps**: The only issues remaining to be addressed in this proceeding are WPTF's Applications for Rehearing. Remaining RA issues will be addressed in the successor RA rulemaking, R.19-11-009.

- **Additional Information**: D.20-09-003 denying PFMs filed by PG&E, CalCCA, and Joint Parties (September 16, 2020); WPTF's Application for Rehearing of D.20-06-028 (August 5, 2020); WPTF's Application for Rehearing of D.20-06-002 (July 17, 2020); D.20-06-028 on Track 1 RA Imports (approved June 25, 2020); D.20-06-002 establishing a central procurement mechanisms for local RA (June 17, 2020); D.20-03-016 granting limited rehearing of D.19-10-021 (March 12, 2020); D.20-01-004 on qualifying capacity value of hybrid resources (January 17, 2020); D.19-12-064 granting motion for stay of D.19-10-021 (December 23, 2019); D.19-10-021 affirming RA import rules (October 17, 2019); D.19-06-026 adopting local and flexible capacity requirements (July 5, 2019); Docket No. R.17-09-020.

## Investigation into PG&E's Organization, Culture and Governance (Safety OII)

No updates this month. On November 24, 2020, CPUC President sent a letter to PG&E indicating that she has directed CPUC staff to conduct fact-finding to determine whether to recommend that PG&E be placed into the enhanced oversight and enforcement process.

- **Background**: On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.

  A July 2020 ALJ Ruling described the issues that are potentially still in scope for this proceeding, which include a broad array of issues identified in the December 21, 2018 Scoping Memo, as modified by D.20-05-053 approving PG&E's reorganization plan, plus the ongoing work of NorthStar, the consultant monitoring PG&E. However, the Ruling observed that "it is not clear as a practical matter how many of those issues can be or should be addressed at this time," given PG&E is now implementing its reorganization plan and has filed its application for regional restructuring. Party comments did not explicitly raise the issue of CCA proposals to purchase PG&E electric distribution assets.

  The September 4 Ruling filed in the PG&E Safety Culture proceeding (I.15-08-019) and PG&E Bankruptcy proceeding (I.19-09-016) determined that I.15-08-019 will remain open as a vehicle to monitor the progress of PG&E in improving its safety culture, and to address any relevant issues that arise, with the consultant NorthStar continuing in its monitoring role of PG&E. The Ruling declined to close the proceeding but also declined to move forward with CCAs' consideration of whether PG&E's holding company structure should be revoked and whether PG&E should be a "wires-only company," as well as developing a plan for service if PG&E's CPCN is revoked in the future.

- **Details**: In her November 2020 letter to PG&E, President Batjer pointed to a "pattern of vegetation and asset management deficiencies that implicate PG&E's ability to provide safe, reliable service to customers," and stated the "Wildfire Safety Division Staff has identified a volume and rate of defects in PG&E's vegetation management that is notably higher than those observed for the other utilities."
- **Analysis**: CPUC President Batjer's letter indicates the CPUC is currently investigating whether to move PG&E into its newly created enhanced oversight and enforcement process. This six-step process could ultimately result in a revocation of PG&E's certificate of public convenience and necessity if it fails to take sufficient corrective actions.
- **Next Steps**: The proceeding remains open, but there is no procedural schedule at this time.
- **Additional Information**: Letter from President Batjer to PG&E (November 24, 2020); Ruling updating case status (September 4, 2020); Ruling on case status (July 15, 2020); Ruling on proposals to improve PG&E safety culture (June 18, 2019); D.19-06-008 directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); Scoping Memo (December 21, 2018); Docket No. I.15-08-019.

## Wildfire Cost Recovery Methodology Rulemaking

No updates this month. An August 7, 2019, PG&E Application for Rehearing remains pending regarding the CPUC's recent Decision establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay (D.19-06-027).

- **Background**: SB 901 requires the CPUC to determine, when considering cost recovery associated with 2017 California wildfires, that the utility's rates and charges are "just and reasonable." In addition, and notwithstanding this basic rule, the CPUC must "consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

  D.19-06-027 found that the Stress Test cannot be applied to a utility that has filed for Chapter 11 bankruptcy protection (i.e., PG&E) because under those circumstances the CPUC cannot determine essential components of the utility's financial status. In that instance, a reorganization plan will inevitably address all pre-petition debts, include 2017 wildfire costs, as part of the bankruptcy process. The framework proposed for adoption in the PD is based on an April 2019 Staff Proposal, with some modifications. The framework requires a utility to pay the greatest amount of costs while maintaining an investment grade rating. It also requires utilities to propose ratepayer protection measures in Stress Test applications and establishes two options for doing so.

  PG&E's application for rehearing challenges the CPUC's prohibition on applying the Stress Test to utilities like itself that have filed for Chapter 11 bankruptcy. PG&E's rationale is that SB 901 requires the CPUC to determine that the stress test methodology to be applied to all IOUs. Several parties filed responses to PG&E's application for rehearing disagreeing with PG&E.
- **Details**: N/A.
- **Analysis**: This proceeding established the methodology the CPUC will use to determine, in a separate proceeding, the specific costs that the IOUs (other than PG&E) may recover associated with 2017 or future wildfires.
- **Next Steps**: The only matter remaining to be resolved in this proceeding is PG&E's application for rehearing. This proceeding is otherwise closed.

- **Additional Information**: PG&E Application for Rehearing (August 7, 2019); D.19-06-027 (July 8, 2019); Assigned Commissioner's Ruling releasing Staff Proposal (April 5, 2019); Scoping Memo and Ruling (March 29, 2019); Order Instituting Rulemaking (January 18, 2019); Docket No. R.19-01-006. *See also* SB 901, enacted September 21, 2018.

## Glossary of Acronyms

| | |
|---|---|
| **AB** | Assembly Bill |
| **AET** | Annual Electric True-up |
| **ALJ** | Administrative Law Judge |
| **BioMAT** | Bioenergy Market Adjusting Tariff |
| **BTM** | Behind the Meter |
| **CAISO** | California Independent System Operator |
| **CAM** | Cost Allocation Mechanism |
| **CARB** | California Air Resources Board |
| **CEC** | California Energy Commission |
| **CPE** | Central Procurement Entity |
| **CPUC** | California Public Utilities Commission |
| **CPCN** | Certificate of Public Convenience and Necessity |
| **CTC** | Competition Transition Charge |
| **DA** | Direct Access |
| **DWR** | California Department of Water Resources |
| **ELCC** | Effective Load Carrying Capacity |
| **ERRA** | Energy Resource and Recovery Account |
| **EUS** | Essential Usage Study |
| **GRC** | General Rate Case |
| **IEPR** | Integrated Energy Policy Report |
| **IFOM** | In Front of the Meter |
| **IRP** | Integrated Resource Plan |
| **IOU** | Investor-Owned Utility |
| **ITC** | Investment Tax Credit |
| **LSE** | Load-Serving Entity |
| **MCC** | Maximum Cumulative Capacity |
| **OII** | Order Instituting Investigation |
| **OIR** | Order Instituting Rulemaking |
| **PABA** | Portfolio Allocation Balancing Account |
| **PD** | Proposed Decision |
| **PG&E** | Pacific Gas & Electric |
| **PFM** | Petition for Modification |

| | |
|---|---|
| **PCIA** | Power Charge Indifference Adjustment |
| **POLR** | Provider of Last Resort |
| **PSPS** | Public Safety Power Shutoff |
| **PUBA** | PCIA Undercollection Balancing Account |
| **PURPA** | Public Utility Regulatory Policies Act of 1978 (federal) |
| **QC** | Qualifying Capacity |
| **QF** | Qualifying Facility under PURPA |
| **RA** | Resource Adequacy |
| **RDW** | Rate Design Window |
| **ReMAT** | Renewable Market Adjusting Tariff |
| **RPS** | Renewables Portfolio Standard |
| **SCE** | Southern California Edison |
| **SED** | Safety and Enforcement Division (CPUC) |
| **SDG&E** | San Diego Gas & Electric |
| **TCJA** | Tax Cuts and Jobs Act of 2017 |
| **TOU** | Time of Use |
| **TURN** | The Utility Reform Network |
| **UOG** | Utility-Owned Generation |
| **WMP** | Wildfire Mitigation Plan |
| **WSD** | Wildfire Safety Division (CPUC) |

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 9**

**TO:** Board of Directors

**FROM:** Rebecca Boyles, Director of Customer Care & Marketing

**SUBJECT:** Customer Enrollment Update (Information)

**DATE:** April 8, 2021

## RECOMMENDATION

Receive and review the attached Customer Enrollment update as of March 31, 2021.

# Item 9 - Enrollment Update

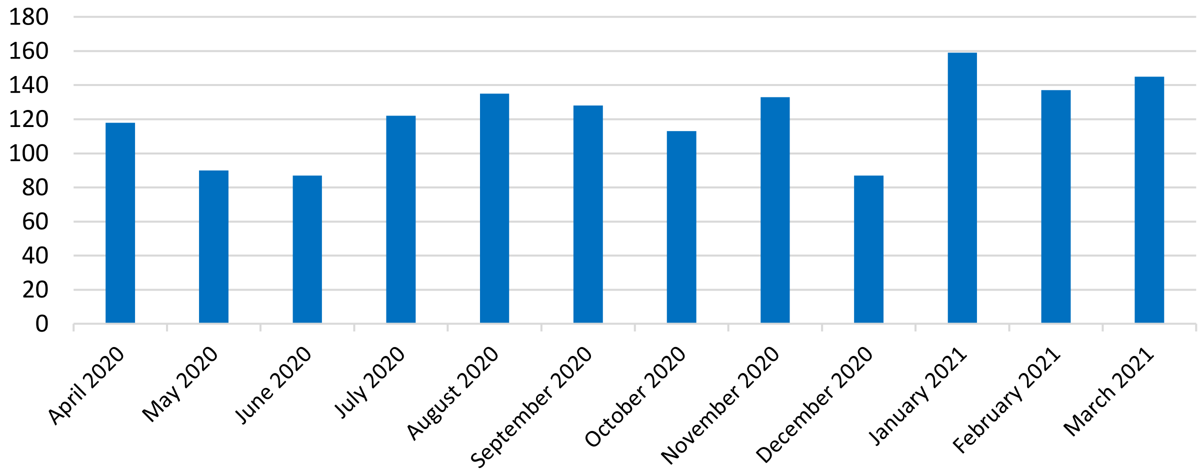
| | Davis | Woodland | Winters | Yolo Co | Total | Residential | Commercial | Industrial | Ag | NEM | Non-NEM |
|---|---|---|---|---|---|---|---|---|---|---|---|
| VCEA customers | 27,831 | 20,776 | 2,247 | 10,747 | 61,601 | 53,496 | 6,132 | 6 | 1,879 | 9,912 | 51,689 |
| Eligible customers | 29,126 | 23,727 | 2,422 | 12,233 | 67,508 | 58,589 | 6,676 | 6 | 2,133 | 10,759 | 56,749 |
| Participation Rate | 96% | 88% | 93% | 88% | 91% | 91% | 92% | 100% | 88% | 92% | 91% |

There are currently 376 Winters customers not included in this table. NEM will enroll throughout 2021.

## % of Load Opted Out

| Residential | Commercial | Industrial | Ag | Total |
|---|---|---|---|---|
| 9% | 8% | 0% | 12% | 9% |

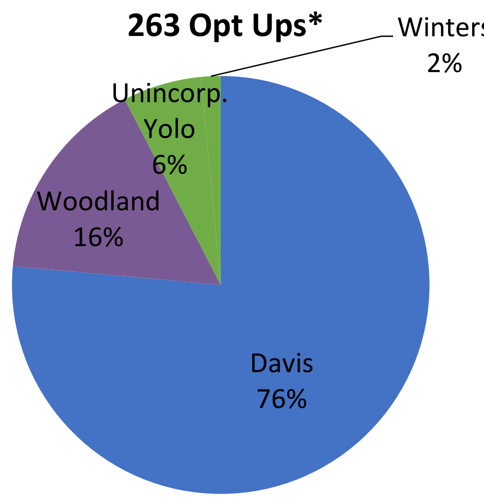
### Monthly Opt Outs

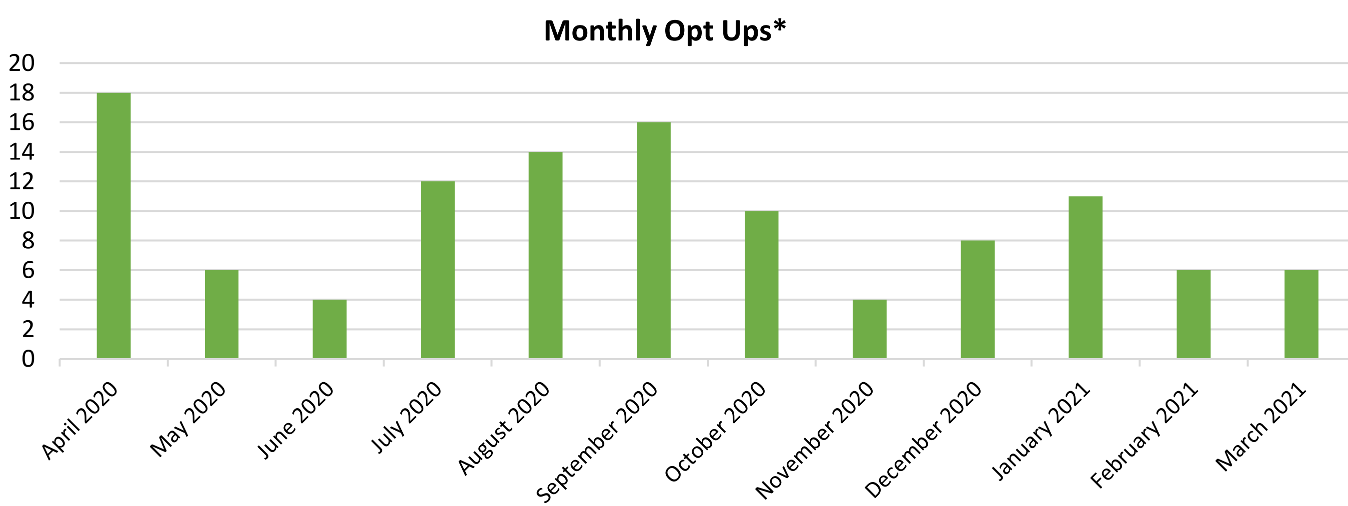



Status Date: 3/31/21

VALLEY CLEAN ENERGY

# Item 9 - Enrollment Update



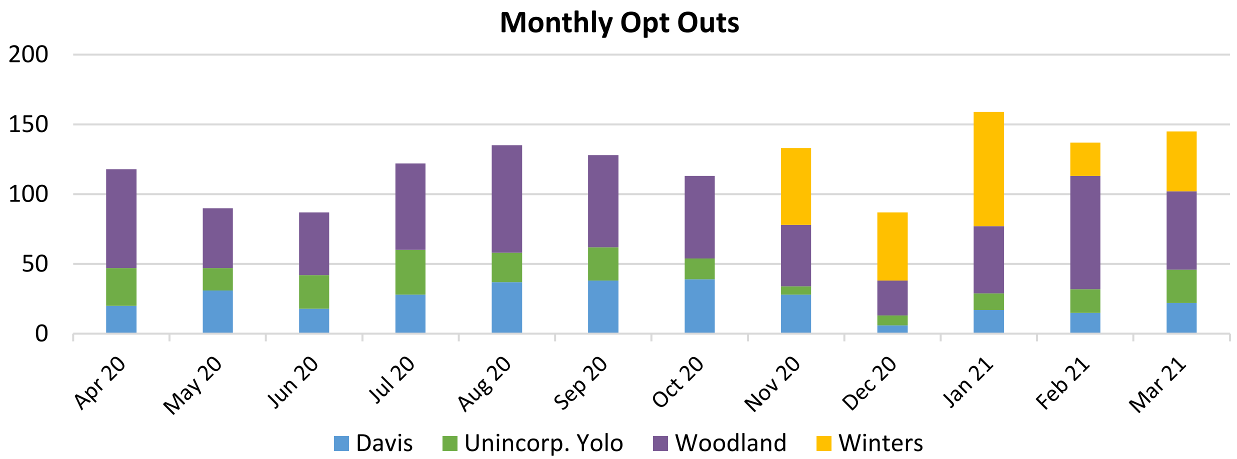



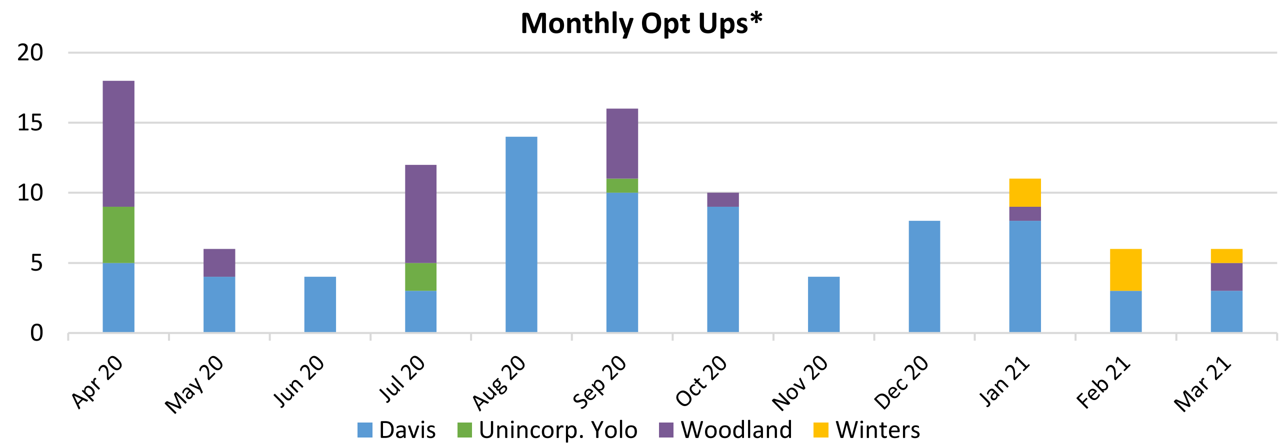

* The numbers in the pie chart represent opt ups for customers who are currently enrolled. The numbers in the bar graph represent opt up actions taken regardless of current enrollment status.

Status Date: 3/31/21

VALLEY CLEAN ENERGY

# Item 9 - Enrollment Update



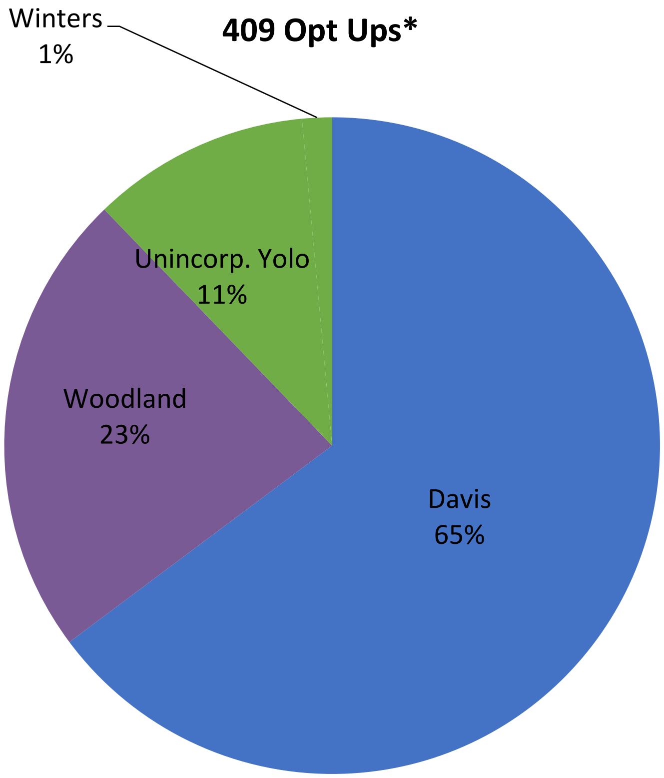

* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

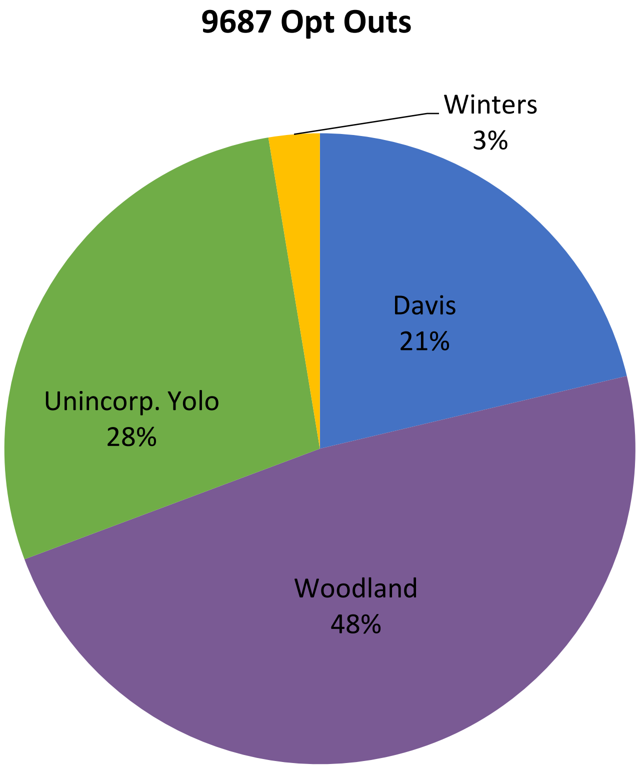
Status Date: 3/31/21



VALLEY CLEAN ENERGY

# Item 9 - Enrollment Update




* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

Status Date: 3/31/21

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 10**

| | |
|---|---|
| TO: | Board of Directors |
| FROM: | Alisa Lembke, Board Clerk / Administrative Analyst |
| SUBJECT: | Community Advisory Committee March 25, 2021 Meeting Summary |
| DATE: | April 8, 2021 |

This report summarizes the Community Advisory Committee's meeting held via Zoom webinar on Thursday, March 25, 2020 at 5 p.m.

A. **Progress update on draft 3-year Customer Programs Plan (Information/Discussion):** CAC received a report from Staff Rebecca Boyles and Tessa Tobar on the draft three year plan, phases identified within, potential programs, and customer programs survey currently being circulated for input. CAC Members asked questions and provided insightful feedback. There was also discussion of criteria to use in prioritizing possible programs including cost, manpower and impacts such as GHG emissions, and public opinion, etc. The group will return in a few months to the CAC with a final draft and suggested initial program(s). Verbal public comment was provided by Connor Gorman who supports the draft programs plan and suggested focusing on marginalized communities when developing programs.

B. **Senate Bill 612 – Rate Payer Equity: Discuss VCE outreach opportunities related to 3/11/21 Board action support the legislation (Discussion):** Staff Mitch Sears and lobbyist consultant Mark Fenstermaker of Pacific Policy Group provided an overview of Senate Bill (SB) 612 and those efforts to contact potential partners to support SB 612. Several agencies and organizations were identified as potential support partners.

C. **Long Range Calendar:** Chair Shewmaker briefly reviewed the long range calendar noting that at the CAC's April 22nd meeting, Dr. Olof Bystrom has been scheduled to speak about SMUD's goal of being carbon neutral by 2030. In addition, she noted that CalCCA's Annual meeting is tentatively scheduled for November 29th through December 1st which will be held in person and virtually and has been added to the bottom of the long range calendar. Some of the CAC's members are interested in attending virtually.

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 11**

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**TO:** Board of Directors

**FROM:** Mitch Sears, Interim General Manager

**SUBJECT:** Approval of Amendment 3 extending the agreement with Pacific Policy Group for lobbying services

**DATE:** April 8, 2021

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**RECOMMENDATION**
Authorize VCE's Interim General Manager to execute an amendment to the Pacific Policy Group ("PPG") Agreement for lobbying services extending term one-year effective July 1, 2021 terminating June 30, 2022 for a not to exceed amount of $60,000.

**BACKGROUND**
During VCE's first year of operations, there were several legislative bills identified in the 2017-2018 Legislative session that posed significant issues for CCA's. Although VCE participates in the joint CalCCA Legislative group for monitoring of legislative bills that may have significant impact on CCA's, VCE did not have a lobbying and consulting firm that would provide legislative advocacy services for VCE's specific interests.

To address this need, the Board approved a contract with PPG in February 2019 for lobbying services at a not to exceed amount of $60,000/yr. The agreement was extended by the Board at the original cost through June 30, 2021. This contract allows VCE to execute its legislative platform most recently updated by the Board in December 2020.

With the 2021 Legislative session in process, staff believes the continuance of VCE's direct engagement with the Legislature is important as key energy Bills continue to move through the process. In order to be effective and execute VCE's legislative platform, staff believes it is necessary to have an experienced lobbying presence in Sacramento. Staff continues to be satisfied with PPG's performance, responsiveness, and professionalism and is therefore recommending an extension of the existing contact for lobbying services.

The cost for this agreement extension for lobbying services is $60,000/yr and will be budgeted in the FY20201-2022 operating budget.

**CONCLUSION**
Staff recommends approval of Amendment 3, extending VCE's agreement with PPG through June 30, 2022.

**Attachments:**
1. Amendment Three (3)
2. Resolution

**AMENDMENT NO. THREE (3)**

**TO THE ENERGY ADVISORY SERVICES**

**CONSULTANT AGREEMENT**

**BETWEEN**

**VALLEY CLEAN ENERGY ALLIANCE**

**AND**

**PACIFIC POLICY GROUP, LLP**

**1. Parties and Date.**

This Amendment No. Three (3) to the Energy Advisory Services Agreement is made and entered into as of 1st day of May 2021, by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California ("VCEA") and Pacific Policy Group, a Limited Liability Partnership ("PPG"). VCEA and PPG are sometimes individually referred to as "Party" and collectively as "Parties."

**2. Recitals.**

2.1 VCEA and PPG entered into a consultant services agreement effective February 1, 2019 for the purpose of retaining PPG to provide energy advisory services, including lobbying services, described in the Agreement ("the "Agreement"); extended this Agreement, by Amendment No. 1through June 30, 2021.

2.2 Amendment Purpose. VCEA and PPG desire to amend the Agreement to extend the term through June 30, 2022 and increase the not to exceed amount under the Agreement.

**3. Terms.**

3.1 Amendment. Sections 1.4 Term and 4.1 Compensation of the Agreement are hereby amended in their entirety to read as follows:

1.4 Term. The term of this Agreement which began on February 1, 2019 and has been extended through June 30, 2021 shall be extended and shall continue from July 1, 2021 through June 30, 2022 unless terminated as provided in Article 5.

3.2 Compensation. This is a "time and materials" based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. The total compensation as set forth in Amendment No. 2 shall continue through June 30, 2021. Thereafter and notwithstanding the provisions of Exhibit D, the total compensation for the period July 1, 2021 through June 30, 2022 shall not exceed Sixty Thousand ($60,000) without written approval of VCEA. Extra work may be authorized, as described in the Agreement, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. Three (3), all other provisions of the Energy Advisory Services Agreement remain in full force and effect and shall govern the actions of the parties. From and after the date of this Amendment No. Three (3) whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Three (3).

3.6 Severability. If any portion of this Amendment No. Three (3) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. THREE (3) as of the ______ day of ______, 2021.

| VALLEY CLEAN ENERGY ALLIANCE | PACIFIC POLICY GROUP, LLP |
|---|---|
| By: ______________________ | By: ______________________________ |
| Mitch Sears | |
| Interim General Manager | Its: Principal and Co-founder |
| | Printed Name: Mark Fenstermaker |

APPROVED AS TO FORM:

By: ________________________

Harriet Steiner
VCEA Attorney

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2021- ____**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT THREE (3) TO THE PACIFIC POLICY GROUP AGREEMENT FOR LOBBYING SERVICES AND AUTHORIZING THE VCE INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT**

**WHEREAS**, VCE participates in the joint CalCCA Legislative group for monitoring of legislative bills that may have significant impact on CCA's, but VCE desired to have a lobbying and consulting firm that provided legislative advocacy services for VCE's specific interests;

**WHEREAS**, on February 1, 2019 an agreement was entered into between VCE and Pacific Policy Group, LLP, ("PPG") for lobbying services;

**WHEREAS**, through Amendments 1 and 2, the Agreement was extended to expire June 30, 2021 and the not to exceed amounts were modified; and,

**NOW, THEREFORE**, the VCE Board of Directors hereby authorizes the VCE Interim General Manager to execute on behalf of VCE Amendment Three (3) to the PPG Agreement for lobbying services attached hereto and incorporated herein extending term for one year effective July 1, 2021 terminating June 30, 2022 for a not to exceed amount of $60,000, as set forth in the attached Exhibit A – Amendment Three (3) to PPG's Agreement.

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2021 by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________________
Dan Carson, VCE Chair

_____________________________________
Alisa M. Lembke, VCE Board Secretary

Attachment: Exhibit A - Amendment Three (3) to Pacific Policy Group Agreement

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**Exhibit A**

**Amendment Three (3) to Pacific Policy Group Agreement**

## VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 12**

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**TO:** Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Edward Burnham, Finance and Operations Director

**SUBJECT:** Consultant Donald Dame Contract Extension

**DATE:** April 8, 2021

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**RECOMMENDATION**:

Approve a no-cost contract extension of consulting services of Donald Dame for the time period of July 1, 2021 through June 30, 2022.

**BACKGROUND & DISCUSSION**:

Donald Dame has provided professional consulting services for VCE since pre-launch in 2018. He continues to provide consulting services related to enterprise risk management, electric utility analysis, and program implementation assistance among other related activities. In addition, during 2019/20 Mr. Dame assisted VCE with the analysis of the potential acquisition of PG&E's local electricity distribution system and related PG&E bankruptcy matters.

In July 2020, the Board extended Don Dame's contract through June 30, 2021 with a not to exceed amount of $20,000. As of February 2021, approximately $17,000 remains in the $20,000 not to exceed amount. Average spending on this contract over the past 8 months is $325 per month. Due to his experience in the utility sector and deep knowledge of VCE, staff is recommending a one year contract extension until June 30, 2022.

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 13**

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**TO:** Board of Directors

**FROM:** Alisa Lembke, Board Clerk / Administrative Analyst

**SUBJECT:** Resolution to modify time of regular Board meetings

**DATE:** April 8, 2021

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**RECOMMENDATION**
Approve resolution amending Resolution 2020-022, to modify the time for regular Board meetings.

**BACKGROUND**
On September 20, 2017 the Board adopted Resolution 2017-004 establishing a regular meeting day and time and to alternate the monthly meeting location between Davis City Council and Yolo County Board of Supervisors Chambers. Since then, the cities of Woodland and Winters have joined VCE.

In March 2020, due to the COVID-19 pandemic, the Governor executed two orders (N-25-20 and N-29-20) suspending certain provisions of the Brown Act and allowing Boards of Directors to attend meetings telephonically or by videoconference to provide for physical distancing. For numerous months in early 2020, the Board had been holding *special* meetings at 4 p.m. via videoconferencing. On August 13, 2020 via Resolution 2020-022, the place and time of its regular Board meetings was modified to hold their regular meetings via video/teleconference at 4 p.m. during the COVID-19 emergency.

Staff is proposing a meeting time of 5 p.m. - the attached resolution amends Resolution 2020-022 to modify the time of its regular Board meetings to 5 p.m. No other changes to the Resolution are being proposed.

<u>**Attachments**</u>
1. Resolution modifying time
2. Resolution 2020-022

# VALLEY CLEAN ENERGY ALLIANCE

## RESOLUTION NO. 2021-___

## A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE AMENDING RESOLUTION 2020-022 TO MODIFY THE TIME FOR REGULAR BOARD OF DIRECTORS MEETINGS

**WHEREAS**, to encourage and maximize participation of the public in the proceedings and discussions of the Board of Directors, and as required by Section 3.8 of the JPA Agreement, the Board adopted Resolution 2017-004 on September 20, 2017 establishing a regular meeting day to be the second Thursday of the month, a regular meeting time of 5:30 p.m., and to alternate the monthly meeting location between Davis City Council Chambers, 23 Russell Boulevard, Davis and Yolo County Board of Supervisors Chambers at 625 Court Street, Woodland;

**WHEREAS**, on June 13, 2017 the City of Woodland became a member of the VCE Joint Powers Agency and on December 12, 2019 the City of Winters became a member of the VCE Joint Powers Agency;

**WHEREAS**, with the addition of the City of Woodland and the City of Winters, the location of in person meetings will rotate among the member agencies;

**WHEREAS**, pursuant to the provisions of the Governor's Executive Orders N-25-20 (March 12, 2020) and N-29-20 (March 17, 2020), which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing due to the COVID-19 pandemic, all members of the Board of Directors and all staff attend meetings telephonically or by videoconference during the COVID-19 emergency and the public is provided access to observe and participate in the meetings on a written, telephonic or videoconference basis;

**WHEREAS**, the Board of Directors had been holding monthly Special Board meetings in the early months of 2020 via teleconference/videoconference at 4 p.m. while the Governor's Executive Orders are in effect;

**WHEREAS**, on August 13, 2020 via Resolution 2020-022, the Board, in summary: 1) reconfirmed the regular meeting day for the Board to be the second Thursday of the month; 2) set the regular meeting time of the Board to be 4:00 p.m. held via teleconference or videoconference so long as the Executive Orders set forth above are in place; 3) confirmed that when the Board resumes meetings with a physical location, the place will be held within the jurisdiction of one of its agencies; and, 4) reconfirmed that the Clerk shall post the times and places of the Board meetings website to provide advance notice of the times and locations of the meetings; and,

**WHEREAS**, the Board of Directors wish to hold their regular monthly meetings at 5 p.m. instead of 4 p.m. so long as the Executive Orders set forth above are in place.

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Board reconfirms the regular meeting day for the Board of Directors of the Valley Clean Energy Alliance shall be the second Thursday of the month, provided that if a regular meeting date is an official holiday, the meeting will be held on the following day.

2. The regular meeting time of the Board of Directors of the Valley Clean Energy Alliance shall be 5:00 p.m. so long as the Executive Orders set forth above are in place and, the meetings of the Board of Directors, during this time shall be held via teleconference or videoconference. At the termination of the Executive Orders related to the COVID-19 emergency, the regular meeting time of the Board of Directors' meeting shall be 5:30 p.m.

3. When the Board resumes meetings with a physical location, the regular meeting place(s) of the Board of Directors of the Valley Clean Energy Alliance shall be held within the jurisdiction of one of its member agencies at the following locations: Davis City Council Chambers (Davis), City of Woodland Council Chambers (Woodland), and City of Winters Police/Fire Station (Winters), or Yolo County Board of Supervisors Chambers (Woodland) and the meetings shall rotate from member to member in the order set forth in this paragraph.

4. The Clerk shall post the times and places of the Board meetings on the Valley Clean Energy Alliance website to provide advance notice of the times and locations of the meetings.

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _______ 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_______________________________________
Dan Carson, VCE Chair

_____________________________________
Alisa M. Lembke, VCE Board Secretary

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**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020-022**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE AMENDING RESOLUTION 2017-004 TO MODIFY THE PLACE AND TIME FOR REGULAR BOARD OF DIRECTORS MEETINGS**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, to encourage and maximize participation of the public in the proceedings and discussions of the Board of Directors, and as required by Section 3.8 of the JPA Agreement, the Board adopted Resolution 2017-004 on September 20, 2017 establishing a regular meeting day to be the second Thursday of the month, a regular meeting time of 5:30 p.m., and to alternate the monthly meeting location between Davis City Council Chambers, 23 Russell Boulevard, Davis and Yolo County Board of Supervisors Chambers at 625 Court Street, Woodland;

**WHEREAS**, on June 13, 2017 the City of Woodland became a member of the VCE Joint Powers Agency and on December 12, 2019 the City of Winters became a member of the VCE Joint Powers Agency;

**WHEREAS**, with the addition of the City of Woodland and the City of Winters, the location of in person meetings will rotate among the member agencies;

**WHEREAS**, pursuant to the provisions of the Governor's Executive Orders N-25-20 (March 12, 2020) and N-29-20 (March 17, 2020), which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing due to the COVID-19 pandemic, all members of the Board of Directors and all staff attend meetings telephonically or by videoconference during the COVID-19 emergency and the public is provided access to observe and participate in the meetings on a written, telephonic or videoconference basis; and,

**WHEREAS**, the Board of Directors has been holding monthly Special Board meetings via teleconference/videoconference at 4 p.m. while the Governor's Executive Orders are in effect.

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**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Board reconfirms the regular meeting day for the Board of Directors of the Valley Clean Energy Alliance shall be the second Thursday of the month, provided that if a regular meeting date is an official holiday, the meeting will be held on the following day.

2. The regular meeting time of the Board of Directors of the Valley Clean Energy Alliance shall be 4:00 p.m. so long as the Executive Orders set forth above are in place and, the meetings of the Board of Directors, during this time shall be held via teleconference or videoconference. At the termination of the Executive Orders related to the COVID-19 emergency, the regular meeting time of the Board of Directors' meeting shall be 5:30 p.m.

3. When the Board resumes meetings with a physical location, the regular meeting place(s) of the Board of Directors of the Valley Clean Energy Alliance shall be held within the jurisdiction of one of its member agencies at the following locations: Davis City Council Chambers (Davis), City of Woodland Council Chambers (Woodland), and City of Winters Police/Fire Station (Winters), or Yolo County Board of Supervisors Chambers (Woodland) and the meetings shall rotate from member to member in the order set forth in this paragraph

4. The Clerk shall post the times and places of the Board meetings on the Valley Clean Energy Alliance website to provide advance notice of the times and locations of the meetings

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the 13th day of August 2020, by the following vote:

AYES: Saylor, Carson, Stallard, Sandy, Frerichs, Barajas, Loren
NOES: None
ABSENT: Cowan
ABSTAIN: None

Don Saylor

Don Saylor, VCE Chair

Alisa M. Lembke

Alisa M. Lembke, VCE Board Secretary

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# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 14**

**TO:** Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Gordon Samuel, Assistant General Manager & Director of Power Services

**SUBJECT:** First Amendment to the Westlands Solar Park Power Purchase Agreement

**DATE:** April 8, 2021

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**RECOMMENDATION**
Authorize the Interim General Manager to execute the first amendment to the Westlands Solar Park Power Purchase Agreement (PPA) modifying force majeure and liability provisions.

**BACKGROUND**
In February 2020, Valley Clean Energy Alliance (VCE) entered into a fifteen (15) year PPA with Aquamarine Westside LLC for 50 MW ac of output from the Aquamarine Solar photovoltaic project located in Kings County, California. The project is currently under construction and is anticipated to be on-line in the third quarter of 2021. VCE has contracted for 50 MW of output from the larger 250 MW Westlands Solar Park facility.

**ANALYSIS**
As the developer finalizes its short-term and long-term financing for the overall facility, the project's lenders have asked for several modifications to the PPA. The material aspects of the requested amendments relate to (1) force majeure and (2) buyer (VCE) liability.

Force Majeure
Generally, a force majeure provision in a PPA contract relates to uncontrollable events (such as natural disasters), that are not the fault of any party and that make it difficult or impossible to carry out certain contract provisions typically related to project construction.

The developer's lenders have requested that the force majeure language in the PPA be updated to reflect what is more customarily seen in the market today. In response, with concurrence from VCE's outside PPA legal counsel (Keyes & Fox), staff offered force majeure replacement language from the recent PPA approved by the Board in January 2021. The developer's lenders have accepted this language and staff and legal counsel are comfortable that this approach maintains needed protections for VCE. An added benefit of this approach to VCE would be that it provides consistency between several of VCE's PPAs.

Buyers Liability

The second material change in the recommended amendment relates to uncapping damages that VCE could be exposed to while the developer completes construction of the overall 250 MW facility. To obtain loans to complete construction of the Westlands Solar Park facility, of which the VCE Aquamarine project is a part, the developer's lenders have asked for a short-term removal of the cap on VCE's liability in the event VCE defaults under the PPA; the requested term for removal of the cap is through March 2022 or when the financing for the overall project is complete, whichever occurs first. The request also seeks to modify how the developer's "losses" will be determined in such an event. Although this would expose VCE to increased liability[1]should VCE default under the PPA for up to approximately one year (to March 2022), staff believes the risk of default is extremely low due to the following factors:

- VCE has very few performance obligations under the PPA prior to the project achieving commercial operation, as the project will still be under construction and will not be delivering more than a *de minimis* amount of energy to VCE until approximately September 2021.
- When the Aquamarine project achieves commercial operation, VCE's energy deliveries will increase. The term of the liability waiver will, however, end in March 2022.
- VCE's obligations under the contract are largely limited to making timely payment for delivered energy, which VCE intends to do.
- Staff does not foresee any likelihood of VCE being unable to make payments on invoices that may become due between the November 2021 timeframe, when the first invoice for delivered energy would likely become payable, and March 2022 when the cap on liability is reinstated.

Additionally, as negotiated by staff, after March 2022, the cap on damages reverts back to the original capped amount. In exchange for agreeing to this proposed amendment, the developer has agreed to remove an April 2021 deadline from the contract by which time VCE would have had to make an election of obtaining a credit rating, posting collateral or paying a higher price for the 15-year term of the agreement. This amendment removes the April 2021 date, and if at any point during the 15-year term of this agreement VCE elects to post collateral or obtains a credit rating, the contract price will adjust to a lower amount representing an approximately 7%% reduction in price/kWh. Staff believes that it is likely that VCE will be able to meet one or both of these scenarios in the future to achieve the lower price, which results in a benefit for VCE's customers.

[1] As with the original PPA contract for the Aquamarine Solar project approved by the VCE Board in February 2020, certain contract business terms in the proposed Amendment 1 are treated as confidential to maintain VCE's ability to successfully negotiate future power contracts and to protect the counterparty's trade secrets, among other reasons. These confidential business terms include, but are not limited to, contracted energy price and buyer/seller liability amounts. VCE, in consultation with SMUD and outside legal counsel, negotiates these terms using best industry practices and available market data to optimize customer value and manage risk. Aside from the terms outlined above, the existing terms of the PPA remain unchanged.

Based on the limited risk profile outlined above and the consideration agreed to by the developer, staff, in consultation with outside PPA legal counsel, believe the proposed amendments are reasonable.

**CONCLUSION**
Staff is recommending that the Board approve the attached resolution authorizing the Interim General Manager to execute the first amendment.

**ATTACHMENTS**
1. First Amendment to Power Purchase Agreement
2. Redlines Showing first Amendment to Westlands Solar Park Power Purchase Agreement
3. Resolution

# FIRST AMENDMENT TO POWER PURCHASE AGREEMENT

This First Amendment to the Westlands Solar Park Power Purchase Agreement (this "***First Amendment***"), dated as of [__] (the "**Amendment Date**"), is made and entered into by and among Aquamarine Westside, LLC, a Delaware limited liability company ("***Seller***") and Valley Clean Energy Alliance, a California Joint Powers Authority ("***Buyer***"). Seller and Buyer are each referred to as a "***Party***" and collectively referred to as the "***Parties***." Capitalized terms used but not defined in this First Amendment shall have the meanings given to such terms in the PPA (as hereinafter defined).

**WHEREAS,** Seller and Buyer have entered into, and desire to amend as set forth below, that certain Westlands Solar Park Power Purchase Agreement dated as of February 14, 2020 (the "***PPA***");

**WHEREAS,** the Parties desire to amend certain matters as more specifically set forth in this First Amendment.

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

1. **Amendments to the PPA**. Notwithstanding anything to the contrary in the PPA, the Parties agree that the following amendments to the PPA are made effective as of the Amendment Date:

(a) The definition of "Force Majeure Event" appearing in Section 1.1 of the PPA is hereby deleted and replaced with the following:

"***Force Majeure Event***" means:

(a) any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "***Force Majeure Event***" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Buyer Curtailment Order, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any of Seller's Interconnection Facilities, except to the extent caused by a Force Majeure Event.

(b) The following shall be added as new definitions to Section 1.1 of the PPA:

" "***Final TE Contribution Date***" means the date that is the earlier of (i) the date that the Tax Equity Investor has made its final equity capital contribution in connection with the completion of construction of the Facility and (ii) March 31, 2022."

(c) The PPA shall be amended by adding the following as a new Section 2.6(c):

"(c) Seller shall provide notice to Buyer of the Final TE Contribution Date within five (5) Business Days after the occurrence of the Final TE Contribution Date."

(d) Section 2.5(f) of the PPA is hereby amended by adding after "October 30, 2021" the following phrase: "after giving effect to all Permitted Extensions and which shall be extended, on a day-for-day basis, for every [redacted] that Seller pays to Buyer as Daily Delay Damages pursuant to Section 2.5(e)" at the end thereof.

(e) The definition of "***Losses***" appearing in Section 1.1 of the PPA is hereby amended by deleting the last sentence of such definition in its entirety.

(f) Section 2.10(d)(i) of the PPA is hereby amended by adding the phrase "or IDS" immediately after "FCDS".

(g) Section 3.4(c)(i) of the PPA is hereby amended by deleting the following phrase in its entirety, "which shall in no event", and inserting the phrase, "which in the case of an Event of Default occurring on or after the Final TE Contribution Date shall not" in lieu thereof.

(h) Section 5.4(a) of the PPA is hereby amended by deleting the phrase ", on or before April 21, 2021,".

(i) Exhibit B to the PPA is hereby amended and restated by deleting Exhibit B in its entirety and replacing it with Annex I attached hereto.[1]

(j) Section 8.5 of the PPA is hereby deleted and replaced with the following:

"8.5 ***Force Majeure.***

(a) No Liability If a Force Majeure Event Occurs. Except as provided in Section 8.5(c), neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

(b) Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (i) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (ii) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

(c) Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for

[1] Note to Parties: Exhibit B (description of the Facility) to be provided.

those obligations which survive termination of this Agreement specified in Section 8.10, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement."

2. **Confirmation**. Except as otherwise provided herein, the provisions of the PPA shall remain in full force and effect in accordance with their respective terms following the execution of this First Amendment.

3. **Conflicts**. Section 1 of this First Amendment amends the terms and conditions of the PPA. If any provision of this First Amendment is construed to conflict with any provision of the PPA (except as otherwise expressly provided in this First Amendment), the provisions of this First Amendment shall be deemed controlling to the extent of that conflict.

4. **Entire Agreement**. This First Amendment, the PPA and the Exhibits to the PPA collectively constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof or thereof except as specifically set forth herein or therein.

5. **Choice of Law**. This First Amendment and any claim, controversy or dispute arising under or related to this First Amendment or the transactions contemplated hereby or the rights, duties and relationship of the parties hereto and thereto, shall be governed by and construed and enforced in accordance with the laws of the State of California, excluding any conflicts of law, rule or principle that might refer construction of provisions to the Laws of another jurisdiction.

6. **Amendment**. This First Amendment may be amended, restated, supplemented or otherwise modified only by an instrument in writing executed by all Parties specifically referring to the terms to be amended, restated, supplemented and/or modified and expressly identified as an amendment, restatement, supplement or modification.

7. **Counterparts**. This First Amendment may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by facsimile or other electronic transmission shall be deemed an original signature hereto.

[SIGNATURE PAGE FOLLOWS.]

**IN WITNESS WHEREOF,** the Parties have executed and delivered this First Amendment as of the date first written above.

**SELLER**:

**AQUAMARINE WESTSIDE, LLC,**
a Delaware limited liability company

By: ______________________________
Name: David Thompson
Title: Vice President and CFO

**BUYER**:

**VALLEY CLEAN ENERGY ALLIANCE,**
a California Joint Powers Authority

By: ____________________________
Name: Mitch Sears
Title: Interim General Manager

## EXHIBIT B

## DESCRIPTION OF FACILITY

1. Facility name:

   Aquamarine Solar

2. Facility location:

   The Facility is located just south of the intersection of South Avenal Cutoff & 25$^{th}$ Avenue in Kings County, in the State of California

3. Technology type:

   Solar photovoltaic

4. Interconnection Point of Facility:

   The Facility's Interconnection Point shall be Gates 230 kV, which is he point of first interconnection of the Facility with the CAISO Controlled Grid

5. Service territory of the Facility:

   Pacific Gas & Electric Company

6. Description of Facility equipment:

   The Facility is a solar photovoltaic power generation facility and high-voltage substation with capacity of 250 MW (AC) measured at the Point of Interconnection. The Facility consists of two (2) main power transformers, eighty-eight (88) skids (each include inverters and a medium voltage transformer) with a power rating of 3.28 MVA each, and approximately eight hundred thirty-eight thousand six hundred and fifty-one (838,651) monofacial solar modules mounted to horizontal single-axis trackers with a total power rating of 325.399± MW (DC).

7. Description of Site:

   The Aquamarine solar project is located along 25th avenue south of Avenal Cutoff Road in Kings County, CA. The site will encompass between 1,825-2,000 acres of drainage impaired farm ground that pursuant to approved CUP 17-04 in Kings County, CA using the address 24999 Laurel Avenue, Stratford, CA.

8. Maps:

   The Facility is identified in the following map:

# Redlines Showing
# First Amendment to Westlands Solar Park
# Power Purchase Agreement

***"Expected Energy"*** means the Energy expected to be delivered to the Delivery Point for each Contract Year as specified in **Exhibit H**.

***"Excused Energy"*** means Buyer's Allocation of Energy, expressed in MWh, that would have been produced by the Facility and made available at the Delivery Point, absent: (i) a Curtailment Period, except for a Curtailment Period that results from a Forced Outage or Planned Outage, (ii) a Buyer Curtailment Order, or (iii) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii). For avoidance of doubt, Energy that Seller would have produced and delivered but for a Forced Outage or Planned Outage shall not be counted as Excused Energy. The amount of Excused Energy shall be determined by Seller using the best information available at the time including weather conditions or physical limitations and any other factors relevant to the determination. Seller shall be responsible for collecting and archiving Site insolation in order to determine the Excused Energy for the Facility.

***"Facility"*** means Seller's 250 MW-AC Aquamarine project, located in Kings County, California, together with any and all additions, replacements or modifications thereto, together with other electrical infrastructure, including metering, Seller Interconnection Facilities, SCADA System, and a step-up transformer(s), with a maximum generating Capacity for the Facility at the Delivery Point of 250 MW-AC, as more particularly described in **Exhibits B and B-1**.

***"Facility Construction"*** means the start of construction for the Facility, as demonstrated by Seller's initiation of physical activities at the Site, including the movement of soil, at a sufficient level to reasonably demonstrate that Seller is preparing for the construction of the Facility.

***"Facility Operator"*** means Seller or an Affiliate of Seller that operates the Facility.

***"Final TE Contribution Date"*** means the date that is the earlier of (i) the date that the Tax Equity Investor has made its final equity capital contribution in connection with the completion of construction of the Facility and (ii) March 31, 2022.

***"FERC"*** means the Federal Energy Regulatory Commission.

***"Force Majeure Event"*** means:

(a) any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "***Force Majeure Event***" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Buyer Curtailment Order, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any of Seller's Interconnection Facilities, except to the extent caused by a Force Majeure Event.

~~any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the Effective Date, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in clause (iv) shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its~~

~~obligations by reason of a Force Majeure Event shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure Event does not include any of the following: (1) any requirement to meet an Applicable Law or any change (whether voluntary or mandatory) in any Applicable Law that may affect the value of the Product; (2) events arising from the failure by Seller to operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any costof a Party to perform under this Agreement (except as expressly provided for otherwise herein); (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Product at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service, except due to Force Majeure; (7) failure of third parties to provide goods or services essential to a Party's performance, except due to Force Majeure; (8) Facility or equipment failure of any kind, except due to Force Majeure; or (9) any changes in the financial condition of Buyer, Seller, a Lender, or any subcontractor or supplier impacting the affected Party's ability to perform its obligations under this Agreement.~~

***"Forced Outage"*** means an unplanned reduction, interruption or suspension of the Facility's ability to generate or deliver Energy to the Delivery Point that is not the result of a Force Majeure Event or a Planned Outage.

***"Forward Certificate Transfer"*** has the meaning set forth in the WREGIS Operating Rules.

***"Full Capacity Deliverability Status"*** or ***"FCDS"*** has the meaning set forth in the CAISO Tariff.

***"GEP Damages"*** has the meaning set forth in Section 5.5(a).

**"*Generator Operator"*** means an operator that meets the requirements of Generator Operator as defined by NERC in its Statement of Compliance Registry Criteria (Revision 6.0), as amended or in a successor document.

***"Governmental Authority"*** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing. For purposes of this Agreement, the term Government Authority shall include FERC, NERC (if applicable), WECC, CAISO, CPUC and CEC.

***"Green Attributes"*** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy from the Facility and its avoided emission of pollutants. Green Attributes include but are not limited to in-service date of all the required Network Upgrades required for its requested Full Capacity Deliverability Status.

***"Investment Grade"*** means a Credit Rating of at least "Baa3" with respect to Moody's and at least "BBB-" with respect to S&P.

***"Lender"*** means any and all Persons or successors in interest thereof, other than an Affiliate of Seller, (a) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) in connection with the financing of a portfolio of projects that includes the Facility; (b) participating (directly or indirectly) as a Tax Equity Investor; or (c) a lessor under a lease finance arrangement of the Facility.

***"Lender Consent"*** means a consent substantially in the form of **Exhibit E**, with such modifications as may be reasonably requested by Lenders, subject to Buyer's reasonable approval.

***"Letter of Credit"*** means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution and substantially in the form of **Exhibit G**.

**"*Losses*"** means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it (if any), exclusive of Costs, resulting from termination of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) shall be the loss (if any) to such Party represented by the difference (if any) between the present value of the payments required to be made during the remaining Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. The non-defaulting Party's Losses shall be zero ($0) if such Party receives an economic benefit due to the termination of this Agreement. ~~If the non-defaulting Party is the Seller, then Losses shall exclude any loss of the PTC, or other federal or state tax credits, grants, or benefits related to the Facility or generation therefrom.~~

***"Meter"*** means the revenue quality meters, data processing gateways or remote intelligence gateways, telemetering equipment and data acquisition services that are dedicated to the Facility and are sufficient for monitoring, recording and reporting, in real time, all Energy from the Facility, as required and specified in the CAISO Tariff.

**"*Milestone Schedule*"** means Seller's schedule to develop the Facility, as set forth in **Exhibit I**.

***"Minimum Annual Energy Production"*** means for each Contract Year the quantity of Energy specified in **Exhibit F**.

Construction is initiated. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Seller initiates Facility Construction during a month for which Daily Delay Damages were paid in advance. In the event that Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall return any previously paid Daily Delay Damages resulting from Seller's failure to initiate Facility Construction on or prior to the Guaranteed Construction Date.

(e) Guaranteed Commercial Operation Date. Seller shall have demonstrated Commercial Operation no later than September 24, 2021 (the "Guaranteed Commercial Operation Date"). If Commercial Operation has not occurred on or prior to the Guaranteed Commercial Operation Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day until such time as Commercial Operation is achieved. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Commercial Operation is achieved during a month for which Daily Delay Damages were paid in advance.

(f) Guaranteed Contract Capacity Date. Seller shall have demonstrated Commercial Operation of the full Contract Capacity of the Facility no later than October 30, 2021 after giving effect to all Permitted Extensions and which shall be extended, on a day-for-day basis, for every [redacted] that Seller pays to Buyer as Daily Delay Damages pursuant to Section 2.5(e) (the "Guaranteed Contract Capacity Date"). Seller shall demonstrate Commercial Operation of the full Contract Capacity of the Facility by satisfying the conditions precedent in Section 2.6(a)(ii)-(vi) with respect to the full Contract Capacity. If Seller fails to demonstrate Commercial Operation of the full Contract Capacity on or prior to the Guaranteed Contract Capacity Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to one hundred thousand dollars ($100,000) for each MW, or fraction thereof, of Contract Capacity that fails to reach Commercial Operation by the Guaranteed Contract Capacity Date (the "Contract Capacity Damages").

(g) Permitted Extensions. If Seller complies with Section 2.5(g)(i), the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date, and the Guaranteed Contract Capacity Date, as applicable, may each be extended on a day-for-day basis: (i) for a time period no longer than one-hundred eighty (180) days as a result of a Force Majeure Event or due to a delay caused by transmission provider (e.g., the CAISO), transmission owner, or Buyer through no fault of Seller; and (ii) for a time period no longer than three-hundred and sixty (360) days for a delay due to action or inaction by a Government Authority, through no fault of Seller, that prevents Seller from obtaining Permits or Government Approvals required for the operation of the Facility (together (i) and (ii) shall be considered "Permitted Extensions"). Any Permitted Extensions allowed pursuant to (i) and (ii) shall run concurrently such that total day-for-day extensions shall be no longer than three-hundred and sixty (360) days on a cumulative basis; provided that such Permitted Extensions shall only be granted so long as Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to overcome the cause of such Permitted Extension.

(vii) Seller has installed and commissioned Facility Capacity sufficient for Buyer's Allocation of the Capacity to equal at least ninety-five percent (95%) of the Contract Capacity;

(viii) Seller has satisfied the Insurance Obligations in Section 6.2, and Seller has provided evidence of such insurance to Buyer; and

(ix) Seller has delivered to Buyer the Operating Security.

(b) Seller shall provide notice of expected Commercial Operation to Buyer in writing no less than thirty (30) days in advance of such date. Seller shall provide the Commercial Operation Certificate and all documentation required in Section 2.6(a) to Buyer when Seller believes it has met the conditions for achieving Commercial Operation. Buyer shall have five (5) Business Days to provide Seller with written notice acknowledging or disputing that Commercial Operation has been achieved. In the event Buyer disputes that Commercial Operation has been achieved, Buyer's written notice shall state the basis for such dispute in reasonable detail and the matter shall be subject to the dispute resolution procedures in Section 8.16. Buyer's failure to respond in writing within five (5) days of Seller's delivery of the Commercial Operation Certificate shall be deemed notice of acceptance that Commercial Operation has been achieved. Upon Buyer's written acknowledgement, the Commercial Operation Date shall be the date of Seller's delivery to Buyer of the Commercial Operation Certificate, or the date upon which outstanding issues related to the satisfaction of the conditions in Section 2.6(a) have been resolved.

~~(b)~~(c) Seller shall provide notice to Buyer of the Final TE Contribution Date within five (5) Business Days after the occurrence of the Final TE Contribution Date.

**2.7** ***Title; Risk of Loss.***

Seller shall hold all rights, title and interest to all Product which Seller has conveyed to Buyer hereunder. Title to and risk of loss with respect to any Energy purchased by and delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer at the Delivery Point, and such Energy shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any other Person at the time of Seller's delivery. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Product passes to Buyer, as between the Parties, Buyer shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused thereby. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive incentive or other tax benefits, or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the Seller is eligible for, or receives, incentive tax credits or any other tax benefits.

**2.8** ***Transmission; CAISO Payments and Charges; Curtailment.***

(a) Seller's Transmission Service Obligations. Prior to the Commercial Operation

(d) At all times during the Term, Seller shall install such meters and power electronics as are necessary so that Buyer's Allocation of the Facility's Capacity Rights may be delivered to Buyer. For Seller to obtain the Contract Price corresponding to having delivered Buyer's Allocation of the Facility's Capacity Rights to Buyer, Seller shall (i) have obtained FCDS or IDS for Facility Capacity sufficient for Buyer's Allocation of the Facility's Capacity Rights to equal the Contract Capacity, and (ii) have delivered Capacity Rights to Buyer for the corresponding Showing Month of the Delivery Term. The total amount of Capacity Rights identified and confirmed for each day of such Showing Month shall equal the then applicable NQC of the Facility. Seller shall deliver the Capacity Rights by submitting the Facility and its NQC to the CAISO in Seller's Supply Plan. The Capacity Rights shall be deemed delivered and received when the CIRA Tool shows the Supply Plan accepted for the NQC from the Facility by CAISO or Seller complies with Buyer's instruction to withhold all or part of the NQC from Seller's Supply Plan for any Showing Month during the Delivery Term but Seller otherwise delivers the amount of NQC that Buyer does not direct Seller to withhold. Seller has failed to deliver the Capacity Rights if (i) Buyer has elected to submit the NQC from the Facility in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO, or (ii) Seller fails to submit in its Supply Plan the volume of NQC for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to deliver the Capacity Rights if Buyer fails to submit or chooses not to submit the Facility and the NQC in its Resource Adequacy Plan with the CPUC or CAISO

(e) Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver Capacity Rights pursuant to this Section 2.10, and Seller shall not be subject to any Contract Price reduction pursuant to Section 2.10(a), in the event of changes to Applicable Law that result in Buyer no longer being subject to RA procurement requirements under the CAISO Tariff and Applicable Laws.

**2.11 *Sales for Resale.***

All Energy delivered to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

## ARTICLE 3
## TERM; TERMINATION; DEFAULTS

**3.1 *Term.***

The "Term" of this Agreement shall commence on the Effective Date and continue until 23:59 pm PPT on the date that is fifteen (15) years after the first day of the Delivery Term, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

**3.2 *Regulatory Approvals; Certifications; Qualifications.***

Agreements, or (D) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii); or

(xii) Any other default in performance or observance by a Party of any agreement, undertaking, covenant or other obligation contained in this Agreement that has a material adverse effect on the other Party if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default and its impact on the non-defaulting Party; provided, however, that, in the case of any such default that is not reasonably capable of being cured within the thirty (30) Day cure period, the defaulting Party shall have up to an additional sixty (60) Days if it commences to cure the default within such initial thirty (30) Day cure period and it diligently and continuously pursues such cure.

(b) Remedies. Upon the occurrence of, and during the continuation of, an Event of Default by a Party, the non-defaulting Party shall have the right but not the obligation to:

(i) Subject to Section 8.8, pursue all remedies given under this Agreement or now or hereafter existing at law, in equity or otherwise;

(ii) Suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) Terminate this Agreement by notice to the other Party, designating a Day no less than thirty (30) Days after such notice, as an early termination date (the "Early Termination Date") to accelerate all amounts then owing between the Parties and to liquidate and terminate this Agreement.

(c) Termination Payment.

(i) As soon as practicable after the declaration of an Early Termination Date, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment, ~~which shall in no event~~ which in the case of an Event of Default occurring on or after the Final TE Contribution Date shall not exceed [redacted]. The non-defaulting Party shall calculate the Termination Payment in a commercially reasonable manner as of the Early Termination Date. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment, if any, shall be made by the Party owing the Termination Payment within five (5) Business Days after such notice is effective and shall bear interest at the Prime Rate from the due date until paid.

(ii) "Termination Payment" means an amount equal to the sum of all Losses (if any) and all Costs (if any) incurred by the non-defaulting Party as a result of the termination of this Agreement, plus all amounts then currently due from the defaulting Party to the non-defaulting Party under this Agreement, minus all amounts due to the defaulting Party under this Agreement, so that all such amounts shall be netted to a single liquidated amount payable by the defaulting Party to the non-defaulting Party.

(iv) Seller shall obtain, maintain, and remain in compliance with all Permits, Interconnection Agreements, and transmission and distribution rights necessary to operate the Facility and to deliver Product to Buyer, including Energy from the Facility to the Delivery Point;

(v) Seller shall maintain Site Control required for the operation of the Facility at the Site and the performance of any obligations of Seller hereunder;

(vi) Seller shall cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable California statutes and regulations affecting job safety; and

(vii) Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.

**5.4 *Buyer's Financial Security.***

(a) Buyer shall not be required to post financial security during the Term. During the Delivery Term, the Contract Price shall be determined based on whether Buyer has provided Qualifying Credit Support. In the event~~, on or before April 21, 2021,~~ Buyer either (i) obtains an investment-grade credit rating on its long-term, unsecured indebtedness with either Moody's or S&P; or (ii) posts financial security in the amount of [redacted] in the form of a Letter of Credit from a Qualified Institution, a cash deposit, or a combination thereof ("Buyer Financial Security"), then from such date forward for so long as Buyer maintains such credit-rating or credit support, Buyer shall pay "Contract Price B" as set forth in **Exhibit A**. At all other times, Buyer shall pay "Contract Price A" as set forth in **Exhibit A**.

(b) If Buyer elects, in its sole discretion, to post Buyer Financial Security, Seller shall have the right to draw upon the Buyer Financial Security, at Seller's sole discretion, in the event Buyer fails to make any payments owing under this Agreement or to reimburse Seller for costs or damages that Seller has incurred as a result of Buyer's failure to perform under this Agreement. Within five (5) Business Days following any draw by Seller on the Buyer Financial Security, Buyer shall replenish the amount drawn such that the Buyer Financial Security is restored to the full amount; *provided* that in no event shall the maximum recovery by Seller under the Buyer Financial Security exceed [redacted]. Seller shall release the Buyer Financial Security, less amounts drawn, if any, to Buyer upon the earlier of (i) termination of this Agreement in accordance with its terms; (ii) on the tenth (10th) Business Day after the expiration of the Term; and (iii) on the tenth (10th) Business Day after the date upon which Buyer provides evidences that it has achieved an investment-grade credit rating on its long-term, unsecured indebtedness with either Moody's or S&P; *provided* that in the event of a subsequent downgrade or loss of such credit rating, Buyer will, within ten (10) Business Days, provide Seller with replacement Buyer Financial Security or begin paying "Contract Price A", as set forth in **Exhibit A**, for subsequent Energy deliveries.

Attn: Kevin T. Fox, Esq.
Telephone: 510.381.3052
Email: kfox@keyesfox.com

With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:

Best, Best & Kreiger
500 Capitol Mall, Suite 1700,
Sacramento, CA 95814
Attn: Harriet Steiner
Telephone: (916) 551-2821

**8.5** ***Force Majeure.***

(a) No Liability If a Force Majeure Event Occurs. Except as provided in Section 8.5(c), neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.~~The performance of any obligation required hereunder shall be excused to the extent required by, and during the continuation of, any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended, as required to overcome the effects of such Force Majeure Event. The Party experiencing the delay or hindrance shall orally notify the other Party as soon as reasonably practicable following the Force Majeure Event, and shall notify the other Party in writing of the occurrence of such Force Majeure Event, including the nature, cause, date and time of commencement of such event, and extent and anticipated period of delay, within fourteen (14) Days after the commencement of the Force Majeure Event; provided, that the failure of the Party experiencing the delay or hindrance to notify the other Party within such fourteen (14) Day period shall preclude such Party from claiming a Force Majeure Event hereunder for any Days prior to its notice. By way of example, if a Party first notifies the other Party of a Force Majeure Event thirty (30) Days after the commencement of such event, the claiming Party will only have its performance excused by reason of such Force Majeure Event for periods after its notice (i.e., on and after day thirty (30)). Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances.~~

(b) Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (i) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (ii) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.~~If Seller is unable to deliver, or Buyer is unable to receive, Buyer's Allocation of Energy due to a Force Majeure Event, then Buyer shall have no obligation to pay Seller for Buyer's Allocation of Energy not delivered or received by reason thereof. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure. In no event shall any delay or failure of performance caused by any conditions or Force Majeure Event extend this Agreement beyond its stated Term.~~

(c) Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations which survive termination of this Agreement specified in Section 8.10, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.~~Either Party shall have the absolute and unconditional right, but not the obligation, to terminate this Agreement upon thirty (30) Days written notice to the other Party if: (i) a Force Majeure Event occurs that diminishes the Energy generating capacity of the Facility such that Seller is unable to deliver to Buyer at least fifty percent (50%) of the Expected Energy for a period of eighteen (18) consecutive months; or (ii) the Facility is damaged as a result of a Force Majeure Event and thereby rendered inoperable and an independent engineer that is mutually acceptable to the Parties determines that the Facility cannot be repaired or replaced within a period of time not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event; or (iii) if a Force Majeure Event prevents the other Party from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer.~~

~~(d) A Party's exercise of its termination right pursuant to Section 8.5(c) shall be "no-fault" and no Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including for any outstanding payments due in the ordinary course that occurred prior to the termination, and Buyer shall return Seller's Operating Security (less any amounts drawn by Buyer pursuant to this Agreement) within five (5) Business Days of such termination.~~

**8.6** ***Amendments.***

**EXHIBIT B**

**DESCRIPTION OF FACILITY**

1. Facility name:

   Aquamarine Solar

2. Facility location:

   The Facility is located just south of the intersection of South Avenal Cutoff & 25th Avenue in Kings County, in the State of California

3. Technology type:

   Solar photovoltaic

4. Interconnection Point of Facility:

   The Facility's Interconnection Point shall be Gates 230 kV, which is he point of first interconnection of the Facility with the CAISO Controlled Grid

5. Service territory of the Facility:

   Pacific Gas & Electric Company

6. Description of Facility equipment:

   The Facility is a solar photovoltaic power generation facility and high-voltage substation with capacity of 250 MW (AC) measured at the Point of Interconnection. The Facility consists of two (2) main power transformers, eighty-eight (88) skids (each include inverters and a medium voltage transformer) with a power rating of 3.28 MVA each, and approximately eight hundred thirty-eight thousand six hundred and fifty-one (838,651) monofacial solar modules mounted to horizontal single-axis trackers with a total power rating of 325.399± MW (DC).~~[full description of equipment that will be used]~~

7. Description of Site:

   The Aquamarine solar project is located along 25th avenue south of Avenal Cutoff Road in Kings County, CA. The site will encompass between 1,825-2,000 acres of drainage impaired farm ground that pursuant to approved CUP 17-04 in Kings County, CA using the address 24999 Laurel Avenue, Stratford, CA.

8. Maps:

   The Facility is identified in the following map:

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2021-___**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING THE FIRST AMENDMENT TO THE WESTLANDS SOLAR PARK POWER PURCHASE AGREEMENT (PPA) AND AUTHORIZING INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act"), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo ("County"), the City of Davis ("Davis"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs;

**WHEREAS**, on February 13, 2020, the Board of Directors of the Valley Clean Energy Alliance approved Resolution 2020-007, authorizing VCE to enter into a PPA with Aquamarine Westside, LLC; and,

**WHEREAS**, the developer's lenders are requesting several modifications to the PPA in order to finalize the financing package, including force majeure and buyer's liability provisions.

**NOW, THEREFORE,** the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Board hereby approves and authorizes the Interim General Manager to execute the first amendment to the Westlands Solar Park PPA in the form attached hereto on behalf of VCE. The Interim General Manager, in consultation with General Counsel, may make minor changes to this First Amendment provided that the terms described in the Staff Report for this First Amendment are not modified as to time or cost to VCE.

**PASSED, APPROVED, AND ADOPTED,** at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of ________ 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________________
Dan Carson, VCE Chair

______________________________________
Alisa M. Lembke, VCE Board Secretary

Attachment A: First Amendment to Power Purchase Agreement

**Attachment A**

**First Amendment to Power Purchase Agreement with Aquamarine Westside, LLC**

# VALLEY CLEAN ENERGY ALLIANCE

**Staff Report – Item 15**

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**TO:** Board of Directors

**FROM:** Mitch Sears, Interim General Manager
Edward Burnham, Director of Finance & Internal Operations

**SUBJECT:** Preliminary Draft Operating Budget Fiscal Year 2021-2022

**DATE:** April 8, 2021

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**RECOMMENDATION**
Informational – no action requested.

**OVERVIEW**
This Board item is the first of three discussions over the next three meetings leading to the adoption of the FY 2021-2022 operating budget in June 2021. The purpose of this staff report is to: (1) provide an update on the current fiscal year budget and (2) introduce the preliminary draft operating budget for FY 2021-2022 (2022 Budget). After gathering initial feedback at the April Board meeting, staff will return with the next iteration of the draft 2022 Budget for Board review/feedback at the May Board meeting. The final draft 2022 Budget will be presented to the Board for consideration at the June 10th Board meeting.

As detailed in the body of this report, the current fiscal year is anticipated to be approximately $0.8M better than the approved budget for FY 2020-2021 and the preliminary estimate for the 2021-2022 FY is approximately $0.9M lower than the forecast presented to the Board during budget discussions last June. When considering the two fiscal years together, the net $0.1M difference from forecasted budgets is less than 1%.

**BACKGROUND AND ANALYSIS**
**Current Operating Budget Overview - FY 2020-2021**
In June 2020, the Board approved a $52.5M Operating Budget for FY 2020-2021 which includes purchased power and other operating expenses. As discussed and approved by the Board last June, the FY 2020-2021 budget resulted in a net loss of $2.8M, after factoring in fiscal mitigation policy adjustments. The primary drivers of that loss included the increasing/unpredictable Power Charge Indifference Adjustment (PCIA) and the volatility in Resource Adequacy (RA) power pricing due in part to CPUC market design efforts. For reference, the current operating budget was based on the following key factors:

- Covid-19. The 2020-2021 FY Budget included substantial reductions in load and revenue related largely to COVID and anticipated recessionary factors.
- PG&E Generation Rates. 1.4% increase of PG&E's generation rates in FY 2020-2021.

- Power Charge Indifference Adjustment (PCIA). PCIA increase to the cap of approximately 3.2 cents per kWh in May 2020 and a further increase to 4.4 cents per kWh in 4th quarter 2020 due to an expected cap exception trigger. Overall, an approximately 44% increase.
- Power costs. $6.1 million increase in forecasted power costs over the previous FY power budget – due primarily to increasing Resource Adequacy (RA) costs and an anticipated delay in generation from pending long-term solar projects.
- Policy adjustments. The budget reflected the inclusion of two policy options approved by the Board to partially mitigate the financial loss:
    - Power Planning Resource Adjustment, which projected to lower power purchase costs by $2.25 million.
    - Accepting large hydro allocations from PG&E, which avoided a net $125,000 expenditure for GHG free energy.
- Other operating expenses. Non-power costs were effectively flat compared to the previous FY budget, reflecting a 1.3% increase – lower than CPI.

<u>Current FY Update - Year to Date Actual plus Forecast FY 2020-2021</u>
The YTD actual net financial position for the 7 months ending January 31, 2021 plus the forecast for the remaining months of FY 2020-2021 through June 2021, are favorable to the approved budget by approximately $0.8M due mainly to the following factors:

Negative Impacts:
- The net effect of PG&E's average generation rate change (+2.8%) and PCIA increase requires VCE to reduce its average rate by approximately 1.4% to maintain rate parity.
- COVID-19 net impact resulted in higher than forecasted demand driving additional short-term power purchases at higher costs.

Positive Impacts:
- Revenue increases from higher than forecasted customer KWh usage. This increase was partially offset by increased costs for relatively expensive short-term energy purchases to serve this additional load noted in the negative impacts above.
- Lower actual expenditures related to marketing, new member agency on-boarding, legal support and contingency.
- Contract labor expenditures below budget due to staffing model changes – transition to in-house staffing.

**Preliminary Draft 2022 Budget**
The Preliminary Draft 2022 Budget includes a forecasted net income loss of $6.9M. This is an approximately $0.9M greater loss from the $6.0M net loss forecasted and presented to the Board last June. The increased net loss is due primarily to the following major factors that are outside of VCE's direct control:

- RA cost volatility/increase. VCE faces a significant increase in power costs due higher than forecasted resource adequacy costs. Primary drivers for RA cost increases in this time period include a tightening market as fossil fuel baseload energy resources are retired and shifting market rate design and requirements mandated by the CPUC. VCE and SMUD actively monitor and manage the long-term portfolio of RA to remain compliant with reliability requirements and Board Policy. Note: staff is currently exploring lower cost short-term energy contracts and additional deferral of REC purchases to off-set rising RA costs and to bridge the gap as long-term PPA agreements commence.

- COVID-19. Load forecast uncertainty related to Covid-19 is anticipated to be present through at least the first 3-6 months of the 2022 fiscal year. Additionally, changes in long-term load requirements related to post COVID conditions create uncertainty and result in more conservative forecasting.
- TOU rate transitions. Some classes of non-residential customers have been authorized by CPUC decisions to remain on their legacy rates rather than transition to TOU rates in March 2021. This has an undetermined impact on VCE revenues which may or may not be significant. Staff will be developing additional analysis on this potential fiscal impact for the May Board meeting on the draft budget.

<u>Other Operating Expenses</u> – Preliminary Budget Other operating expenses (not including power costs) are nearly flat compared to the FY2021 budget, reflecting only a 1.0% increase – lower than CPI. Primary increases in costs are related to VCE Community Programs and Strategic Plan Implementation, which are offset by expenditure reductions in new member support and legal support.

Primary factors in this category of expenses include:

- Services currently under contract
- Shift of labor mix more heavily towards internal VCE staff and away from SMUD services
- 1.5% annual inflation rate on most expenses not under contract
- 5% contingency rate for unanticipated operating expenses for post COVID transition.

Other Considerations – PCIA is incorporated into the draft preliminary FY 2022 at the previously forecasted net increase of 39%. Generation Rate is forecasted with a 1% increase in PG&E generation rates resulting in VCE increasing its rates to match with corresponding increases in revenue as per the adopted rate setting policy. Both the PCIA and PG&E's generation rate setting are factors outside of VCE control. Staff will continue to monitor potential changes that may have financial impacts.

**CONCLUSION**

The preliminary draft FY 2022 operating budget reflects a -14% net margin; less than 1% difference from the net margin position forecasted and presented to the Board last June. The preliminary draft FY 2022 operating budget net margin position does not meet VCE's 5% minimum annual net margin goal to maintain financial stability.

Staff has prepared the preliminary draft FY 2022 operating budget based on the best available information on PG&E generation rates and PCIA exit fees. As noted in the staff report, continuing volatility and uncertainty in the RA market, PCIA and load forecast due to Covid-19 are the primary drivers of the negative net margins forecast in the preliminary draft FY 2022 budget. Projected use of existing reserves for customer rate stabilization will allow VCE to maintain rate competitiveness with PG&E and bridge the gap until long-term renewable contracts come on-line beginning in late 2021.

Based on the Board feedback and direction, staff will return with an updated draft Operating Budget for FY 2022 in May**.**

**ATTACHMENTS**

1. Preliminary draft FY 2021-2022 budget summary table

**VALLEY CLEAN ENERGY**
**PRELIMINARY OPERATING BUDGET SUMMARY**

| | APPROVED BUDGET FY 2020-21 | ACTUAL YTD JAN 31, 2021 (7 MO) + FORECAST (5 MO) FY 2020-21 | PRELIMINARY BUDGET FY 2021-2022 |
|---|---|---|---|
| OPERATING REVENUE | $ 49,638 | $ 53,981 | $ 49,047 |
| OPERATING EXPENSES: | | | |
| Cost of Electricity | 47,670 | 51,663 | 51,082 |
| Contract Services | 2,723 | 2,577 | 2,559 |
| Marketing | 241 | 177 | 241 |
| Programs | 12 | 3 | 135 |
| Staff Compensation | 1,132 | 1,116 | 1,164 |
| General, Administration and other | 772 | 577 | 829 |
| TOTAL OPERATING EXPENSES | 52,550 | 56,113 | 56,010 |
| TOTAL OPERATING INCOME | (2,912) | (2,131) | (6,964) |
| NONOPERATING REVENUES (EXPENSES) | | | |
| Interest income | 135 | 101 | 139 |
| Interest expense | (57) | (56) | (42) |
| TOTAL NONOPERATING REV/(EXPENSES) | 78 | 45 | 97 |
| NET MARGIN | $ (2,834) | $ (2,086) | $ (6,866) |
| NET MARGIN % | -5.7% | -3.9% | -14.0% |