



**Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, July 8, 2021 at 5:00 p.m.
Via Video/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/88521962192>

Meeting ID: 885 2196 2192

- b. By phone**

One tap mobile:

+1-669-900-9128,, 88521962192# US

+1-253-215-8782,,88521962192# US

Dial:

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Meeting ID: 885 2196 2192

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)

5:00 p.m. Call to Order

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 or are listed on the Consent portion of the agenda. Public comments on matters listed 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 June 10, 2021 Board meeting Minutes.**
5. **Receive 2021 Long Range Calendar.**
6. **Receive Financial Update – May 31, 2021 (unaudited) financial statement.**
7. **Receive Legislative update.**
8. **Receive June 30, 2021 Regulatory update provided by Keyes & Fox.**
9. **Receive June 30, 2021 Customer Enrollment update.**
10. **Receive Community Advisory Committee June 24, 2021 meeting summary.**
11. **Receive copy of Amendment 2 to Jim Parks Consulting Agreement for consulting services increasing the not to exceed amount.**
12. **Ratify via resolution signed Amendment 24 to Sacramento Municipal Utilities District professional services agreement Task Order 2 changing Call Center Staffing hours.**
13. **Authorize the Interim General Manager to exercise VCE's option to extend the River City Bank Revolving Line of Credit (RLOC) and Term Note through January 31, 2022.**
14. **Approve consulting services agreement with Energeia USA to conduct a 100% carbon free portfolio study report for a not to exceed amount of \$60,000 to be completed no later January 31, 2022.**

REGULAR AGENDA

15. **Update on Net Energy Metering (NEM) 3.0. (Informational)**
16. **Strategic Plan Update. (Informational)**
17. **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.
18. **Adjournment:** The Board has tentatively cancelled their regular meeting scheduled for August 12, 2021. The Board has scheduled a meeting for Thursday, September 9, 2021 at 5:00 p.m. to be held via video/teleconference.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS MEETING ON THURSDAY, JULY 8, 2021 AT 5:00 P.M.:

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

Public participation via e-mail: 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

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from June 10, 2021 Board Meeting
DATE: July 8, 2021

RECOMMENDATION

Receive, review and approve the attached June 10, 2021 Board meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, JUNE 10, 2021**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular and Special meetings scheduled for Thursday, June 10, 2021 at 5:00 p.m., to be held via Zoom webinar. Chair Dan Carson announced that the Special meeting will be held concurrently with the regular meeting. Chair Carson established that there was a quorum present and began the meeting at 5:00 p.m.

Board Members Present: Dan Carson, Jesse Loren, Tom Stallard, Don Saylor, Lucas Frerichs (departed at 5:55 p.m.), Wade Cowan, Mayra Vega

Members Absent: Gary Sandy

Welcome Chair Carson welcomed everyone. He read off an honorary Resolution thanking and recognizing Harriet Steiner's work as VCE's co-general legal counsel and recognizing her retirement. Board Members and Staff provided their comments and thanked her for all of her work.

Approval of Regular Meeting Agenda Motion made by Director Stallard to approve the June 10, 2021 meeting agenda, seconded by Director Frerichs. Motion passed with Director Sandy absent.

Public Comment – General and Consent Chair Carson opened the floor for public comment for items not listed on the agenda and items listed on the Consent Agenda. Board Clerk informed those present that there is a written public comment on Consent Item 10 – Staff Report on the Community Advisory Committee's May 27, 2021 meeting summary, specifically regarding the CAC's motion addressing policy strategies. The Board Clerk read the public comment from Mark Aulman into the record.

There were no verbal comments.

Approval of Consent Agenda (Resolutions 2021-012, 2021-013, and 2021-014) Motion made by Director Frerichs to approve the consent agenda, seconded by Director Loren. Motion passed with Director Sandy absent.

The following items were approved, ratified, and/or received:

4. May 13, 2021 Board meeting Minutes as corrected;
5. 2021 Long Range Calendar;
6. Financial Updated – April 30, 2021 (unaudited) financial statement;
7. Legislative Update from Pacific Policy Group;
8. June 3, 2021 Regulatory update provided by Keyes & Fox;
9. June 2, 2021 Customer Enrollment Update;
10. Community Advisory Committee May 27, 2021 meeting summary;
11. Extension of VCE opt-out fee waiver for one year until July 1, 2022;



12. Ratify Amendment 22 (Net Energy Metering Donation Program web format) via Resolution to Task Order 2 of the SMUD agreement as Resolution 2021-012;
13. Amendment 4 to Keyes & Fox agreement providing special legal counsel to VCE; extending services through June 30, 2022; and, modifying Exhibits to the agreement as Resolution 2021-013; and,
14. An agreement with Richards, Watson and Gershon for general counsel services expiring December 31, 2024 as Resolution 2021-014.

Item 15: Consider Adoption of the Fiscal Year 2021-2022 Operating Budget and extension of the policy to reduce procurement of short-term renewable resources for Fiscal Year 2021-2022. (Resolution 2021-015)

Interim General Manager Mitch Sears introduced this item and VCE Staff Edward Burnham reviewed background of Budget development. VCE Staff Gordon Samuel reviewed slides summarizing Power Content Policy background, historical renewable power content, power content outlook in 2021-2022, options to consider of power content policy strategy and RPS compliance, reduced long-term RA exposure, and summarized the recommendation of the Community Advisory Committee (CAC) on policy strategy adjustments. Mr. Burnham summarized FY 21-22 Budget options based on rate adjustments, Options 1 through 3. Mr. Burnham reviewed Staff's recommendation as stated below. Mr. Sears emphasized that VCE's policy is to follow PG&EW's rates and that CCA's have limited information on where IOU's rates, such as PG&E, will land in the future. Staff share the CAC's recommendation about being prudent and taking a cautious approach financially.

Lucas Frerichs departed at 5:55 p.m. approximately.

There were no written public comments.

Verbal Public comment was provided:

Christine Shewmaker, as VCE's CAC Chair, wanted to provide the Board with a brief overview of the flavor of the CAC's lengthy discussion on this topic at their last meeting. In addition to considering load data, COVID impacts, budget forecast, and power content strategies that were presented well by Staff, some CCA Members also mentioned some items, which were not voted on, but she wanted to outline a few bullet points to give the Board an idea of the discussion:

- There are certainly some budget uncertainties, some of which have been mentioned; also those relating to weather, timing and amount of production from the power purchase agreements (PPA's), and any money refunds that may cover non-paying accounts during COVID.
- There was concern about the message to the Community and opposition - clean energy and climate change were and are integral to our purpose and founding.
- This discussion highlighted the need for interaction and lobby at the CPUC (California Public Utilities Commission) and other bodies and agencies



relating to the PCIA (power charge indifference adjustment) and the overall value that CCA's bring to clean energy and the climate battle.

- There is a need for contingency planning due to so many variables out there. It was good to see the various and different rate contingencies but there are also other contingencies out there.

The CAC took this discussion very seriously and all Members who were in attendance gave their opinion and input. Lastly, all felt it was important to continue to review the budget and issues every three months due to all of the uncertainties.

Director Stallard thanked Staff and the CAC for their thoughtful examination of the issues and for their recommendation. Director Stallard made a motion to:

1. Extend the policy strategy adjustments approved by the Board last June one year to reduce procurement of short-term renewable resources (RECs) to partially mitigate financial impacts of rising Power Charge Indifference Adjustment (PCIA) and Resource Adequacy (RA) costs in fiscal year 2021-2022.
2. Approve FY 2021-2022 Operating Budget Option 1 with \$51.2M of operating revenues and \$58.1M of operating expenses.

Director Saylor seconded this motion.

Chair Carson thanked everyone and agreed that reviewing the budget and related issues every few months would be beneficial. He stated that he was happy to hear that SB 612 was moving forward and that conversations with the legislature have begun and are moving forward.

Motion passed by the following vote:

AYES: Carson, Loren, Saylor, Stallard, Vega

NOES: Cowan

ABSENT: Sandy, Frerichs

ABSTAIN: None

Item 16: Consider adoption of the VCE Draft 3-Year Programs Plan and the process by which programs are selected for implementation

Mr. Sears introduced VCE Staff Rebecca Boyles who reviewed programs plan design and review process, overview and background leading up to the draft Programs Plan, and proposed programs and implementation process.

VCE Staff Tessa Tobar reviewed 3 year Programs Plan elements, phases, criteria definitions and weight.



and implementation of proposed program for residential demand response.

Ms. Boyles reviewed the program from OhmConnect (recipient of a CEC grant) - a demand response (DR) and free thermostat pilot program for residential customers.

Ms. Boyles reviewed next steps of the Programs Plan implementation process and implementation forms for program concepts.

There were no verbal or written public comments.

Director Jesse Loren made a motion to:

1. Adoption of VCE's 3-Year Programs Plan, including the process by which programs are selected by VCE for implementation.
2. Approve Demand Response and Free Thermostat for Residential Customers pilot program.

Motion seconded by Director Mayra Vega. Motion passed by the following vote:

AYES: Carson, Loren, Saylor, Stallard, Vega

NOES: Cowan

ABSENT: Sandy, Frerichs

ABSTAIN: None

Item 17: Board Member and Staff Announcements

There were no announcements from the Board.

Mr. Sears informed those present that SB 612 is moving forward in the legislative process and CCA's are looking at bolstering letters of support for submittal by the community. VCE and CalCCA continue to track Western Energy's bankruptcy. Mr. Sears reported that the City of West Sacramento recently endorsed via resolution the electrification of new construction. Mr. Sears informed those present that VCE Staff Tessa Tobar will be leaving VCE to pursue her career at another CCA. Ms. Tobar thanked the Board, CAC and Staff for all of their support and community involvement.

The next Board meeting is scheduled for July 8, 2021 at 5 p.m. via Webinar/teleconference.

Adjournment

Chair Carson adjourned the regular Board meeting at 6:31 p.m.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 5

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

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

DATE: July 8, 2021

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	<ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual if new Members) • Approve Updated CAC Charge (Annual) • Approve 2021 Procurement Plan • Treasurer Function / Investment • GHG Free Attributes • Power Purchase Agreement • Arrearage Management Plan 	<ul style="list-style-type: none"> • Action • Action • Action • Action • Action • Action • Action
January 28, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Formation of 2021 Task Groups (Annual) • Quarterly Power Procurement / Renewable Portfolio Standard Update • Quarterly Strategic Plan update • New Building Electrification • 2021 Marketing Outreach Plan • CA Community Power Agency Joint Powers Authority 	<ul style="list-style-type: none"> • Discussion/Action • Informational • Informational • Informational/Discussion • Action: Recommendation to Board • Action: Recommendation to Board
February 11, 2021	Board DAVIS	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 2021 Marketing Outreach Plan • CA Community Power Agency Joint Powers Authority • Update on January 2021 Rates • Update on Time of Use (TOU) roll out 	<ul style="list-style-type: none"> • Informational • Action • Discussion/Action • Informational • Informational
February 25, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 2021 Task Groups – Tasks/Charge (Annual) • New Building Electrification • Legislative Bills • Update on Time of Use (TOU) roll out 	<ul style="list-style-type: none"> • Informational • Discussion/Action • Discussion/Action • Discussion/Action • Informational

March 11, 2021	Board WOODLAND	<ul style="list-style-type: none"> • New Building Electrification • Legislative Bills 	<ul style="list-style-type: none"> • Discussion/Action • Action
March 25, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Draft Programs Plan 	<ul style="list-style-type: none"> • Discussion
April 8, 2021	Board DAVIS	<ul style="list-style-type: none"> • Preliminary FY21/22 Operating Budget (Annual) 	<ul style="list-style-type: none"> • Informational/Discussion
April 22, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> • 2021 and 2022 Power Content Update • Quarterly Strategic Plan update • SMUD 2030 Zero Carbon Plan - presentation • AB 992 (Social Media)/Brown Act - Best Best Krieger presentation • Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> • Informational • Informational • Informational • Informational/Discussion • Informational
May 13, 2021	Board WINTERS	<ul style="list-style-type: none"> • Update on FY21/22 draft Operating Budget • Update on SACOG Grant – Electrify Yolo • Amendments 22 and 23 to SMUD Agreement Task Order 2 • Execution of Letter Re: SMUD, Resource Adequacy to the Central Procurement District 	<ul style="list-style-type: none"> • Informational • Informational • Action • Action
May 27, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Power Planning 2022 / Renewable Content • Draft 3-Year Programs Plan 	<ul style="list-style-type: none"> • Discussion/Action • Action: Recommendation to the Board
June 10, 2021	Board DAVIS	<ul style="list-style-type: none"> • Approval of FY21/22 Operating Budget (Annual) • Extension of Waiver of Opt-Out Fees for one year (Annual) • Amendment 22 SMUD Agreement Task Order 2 • Draft 3-Year Programs Plan 	<ul style="list-style-type: none"> • Action • Action • Action • Action
June 24, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> • Prioritizing types of energy (placeholder) • Net Energy Metering (NEM) 3.0 Update 	<ul style="list-style-type: none"> • Discussion/Action • Informational
July 8, 2021	Board WOODLAND	<ul style="list-style-type: none"> • Re/Appointment of Members to Community Advisory Committee (Annual) • Net Energy Metering (NEM) 3.0 Update 	<ul style="list-style-type: none"> • Action • Informational

July 22, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Quarterly Power Procurement / Renewable Portfolio Standard update Quarterly Strategic Plan update Legislative Bills update Presentment of program concept(s) (placeholder) Rates Task Group report/update 	<ul style="list-style-type: none"> Informational Informational Informational Discussion/Action 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	<ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo FY21/22 Operating Budget / RPS update Carbon Neutral Task Group report/update (placeholder) 	<ul style="list-style-type: none"> Informational Informational Informational
September 9, 2021	Board WOODLAND	<ul style="list-style-type: none"> Receive Enterprise Risk Management Report (Bi-annual) Update on SACOG Grant – Electrify Yolo Approval of FY20/21 Audited Financial Statements (James Marta & Co.) (Annual) FY21/22 Operating Budget / RPS update Strategic Plan update (Carbon Neutrality) (placeholder) 	<ul style="list-style-type: none"> Informational Informational Action Informational Informational
September 23, 2021	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Outreach Task Group report/update (placeholder) 	<ul style="list-style-type: none"> Informational
October 14, 2021	Board WINTERS	<ul style="list-style-type: none"> Financial Load Forecast (Annual) FY2020/2021 Allocation of Net Margin (Annual) Receive Update on 3 year Strategic Plan (adopted Oct. 2020) Certification of Standard and UltraGreen Products (Annual) 	<ul style="list-style-type: none"> Informational Action Informational Action
October 28, 2021	Advisory Committee DAVIS	<ul style="list-style-type: none"> Receive Financial Load Forecast Update on Power Content Label Customer Mailer Committee Evaluation of Calendar Year End (Annual) Quarterly Power Procurement / Renewable Portfolio Standard update Quarterly Strategic Plan update Outreach Task Group report/update (placeholder) 	<ul style="list-style-type: none"> Informational Informational Discussion Informational Informational Informational

November 11, 2021 Veterans' Day – Holiday – need to reschedule	Board WOODLAND	<ul style="list-style-type: none"> • Certification of Power Content Label (Annual) • Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> • Action • Informational
November 18, 2021 (3 rd Thursday of the month due to Thanksgiving holiday)	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Committee Evaluation of Calendar Year End (Annual) • Review Revised Procurement Guide (Annual) • FY21/22 Operating Budget / RPS update • Update on SACOG Grant – Electrify Yolo • Revise CAC Charge (tentative) (Annual) 	<ul style="list-style-type: none"> • Discussion/Action • Action: Recommendation to Board • Informational • Informational • Discussion
December 9, 2021	Board DAVIS	<ul style="list-style-type: none"> • Receive Enterprise Risk Management Report (Bi-annual) • Approve Revised Procurement Guide (Annual) • FY21/22 Operating Budget / RPS update • Receive CAC 2021 Calendar Year End Report (Annual) • Election of Officers for 2022 (Annual) 	<ul style="list-style-type: none"> • Informational • Action • Informational • Receive • Nominations
December 16, 2021 (3 rd Thursday of the month due to Christmas holiday)	Advisory Committee DAVIS	<ul style="list-style-type: none"> • 2022 CAC Task Group(s) formation (Annual) • Election of Officers for 2022 (Annual) • Revise CAC Charge (tentative) (Annual) 	<ul style="list-style-type: none"> • Discussion • Nominations • Discussion
January 13, 2022	Board WOODLAND	<ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual if new Members) • Approve Updated CAC Charge (tentative) (Annual) 	<ul style="list-style-type: none"> • Action • Action
January 27, 2022	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Quarterly Power Procurement / Renewable Portfolio Standard Update • Quarterly Strategic Plan update 	<ul style="list-style-type: none"> • Informational • Informational

Note: CalCCA Annual Meeting 11/29, 11/30 and 12/1 in San Jose (in person and virtual)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Board of Directors

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

SUBJECT: Financial Update – May 31, 2021 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending May 31, 2021

DATE: July 8, 2021

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of May 1, 2021 to May 31, 2021 (with comparative year to date information) and Actual vs. Budget year to date ending May 31, 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 May 31, 2021.

Financial Statements for the period May 1, 2021 – May 31, 2021

In the Statement of Net Position, VCEA as of May 31, 2021 has a total of \$11,277,797 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account and \$1,998,726 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and owes as of May 31, 2021 \$101,533. 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 \$988,308 as of May 31, 2021 for a total of \$1,383,630. On May 31, 2021, VCE's net position is \$14,256,059.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$4,020,730 of revenue (net of allowance for doubtful accounts) of which \$3,026,313 was billed in May and (\$2,507,736) represent estimated unbilled revenue. The cost of the electricity for the May revenue totaled \$4,116,991. For May, VCEA's gross margin is approximately (11.64%), and operating loss totaled (\$469,437). The year-to-date change in net position was (\$2,331,625).

In the Statement of Cash Flows, VCEA cash flows from operations was (864,282) due to May cash receipts of revenues being lower than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending May 31, 2021

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

- Electric Revenue - \$5,418,336 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.
- Interest Revenue – (\$74,944) and (61%) – variance is due to unfavorable year-to-date than planned due to the Federal Reserve reductions in interest rates resulting from COVID-19 to prevent long-term recessionary conditions.
- Purchased Power - \$4,830,795 and 11% – 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.
- SMUD - Operating Services– (\$118,567) and (46%) – favorable variance to budget due to services lower than planned related to TOU bill protection.
- Legal General Counsel – (\$103,996) and (77%) – favorable variance to budget due to services lower than planned from member agencies and no major cases requiring general counsel.
- New Member Expenses – (59,500) 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 – (\$213,471) 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) May 1, 2021 to May 31, 2021 (with comparative year to date information.)
- 2) Actual vs. Budget for year to date ending May 31, 2021



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF MAY 1 TO MAY 31, 2021

PREPARED ON JULY 1, 2021

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
 May 31, 2021
 (UNAUDITED)

ASSETS

Current assets:

Cash and cash equivalents	\$	11,277,797
Accounts receivable, net of allowance		4,110,697
Accrued revenue		2,507,737
Prepaid expenses		10,636
Other current assets and deposits		6,883
Total current assets		17,913,750

Restricted assets:

Debt service reserve fund		1,100,000
Power purchase reserve fund		1,998,726
Total restricted assets		3,098,726

Noncurrent assets:

Other noncurrent assets and deposits		100,000
Total noncurrent assets		100,000
TOTAL ASSETS	\$	21,112,476

LIABILITIES

Current liabilities:

Accounts payable	\$	452,687
Accrued payroll		38,492
Interest payable		3,494
Due to member agencies		101,533
Accrued cost of electricity		4,103,735
Other accrued liabilities		(1,566,000)
Security deposits - energy supplies		2,295,640
User taxes and energy surcharges		43,206
Current Portion of LT Debt		395,322
Total current liabilities		5,868,109

Noncurrent liabilities

Term Loan- RCB		988,308
Total noncurrent liabilities		988,308
TOTAL LIABILITIES	\$	6,856,417

NET POSITION

Restricted		
Local Programs Reserve		224,500
Restricted		3,098,726
Unrestricted		10,932,833
TOTAL NET POSITION	\$	14,256,059

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF MAY 1, 2021 TO MAY 31, 2021
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING MAY 31, 2021</u>	<u>YEAR TO DATE</u>
OPERATING REVENUE		
Electricity sales, net	\$ 4,020,730	\$ 49,336,178
TOTAL OPERATING REVENUES	<u>4,020,730</u>	<u>49,336,178</u>
OPERATING EXPENSES		
Cost of electricity	4,116,991	47,705,949
Contract services	219,794	2,415,648
Staff compensation	94,063	1,064,797
General, administration, and other	58,081	476,726
TOTAL OPERATING EXPENSES	<u>4,488,929</u>	<u>51,663,120</u>
TOTAL OPERATING INCOME (LOSS)	(468,199)	(2,326,942)
NONOPERATING REVENUES (EXPENSES)		
Interest income	3,016	47,531
Interest and related expenses	(4,254)	(52,214)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(1,238)</u>	<u>(4,683)</u>
CHANGE IN NET POSITION	(469,437)	(2,331,625)
Net position at beginning of period	14,725,496	16,587,684
Net position at end of period	<u>\$ 14,256,059</u>	<u>\$ 14,256,059</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF MAY 1 TO MAY 31, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING MAY 31, 2021</u>	<u>YEAR TO DATE</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 2,573,094	\$ 51,634,085
Receipts for security deposits with energy suppliers	37,000	1,780,000
Payments to purchase electricity	(3,146,979)	(48,193,641)
Payments for contract services, general, and administration	(238,071)	(5,249,475)
Payments for staff compensation	(89,326)	(1,038,109)
Other cash payments	-	(4,343)
Net cash provided (used) by operating activities	<u>(864,282)</u>	<u>(1,071,483)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(32,944)	(362,376)
Interest and related expenses	(4,215)	(48,940)
Net cash provided (used) by non-capital financing activities	<u>(37,159)</u>	<u>(411,316)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	3,016	47,531
Net cash provided (used) by investing activities	<u>3,016</u>	<u>47,531</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	(898,425)	(1,435,268)
Cash and cash equivalents at beginning of period	15,274,948	15,816,006
Cash and cash equivalents at end of period	<u>\$ 14,376,523</u>	<u>\$ 14,380,738</u>
Cash and cash equivalents included in:		
Cash and cash equivalents	11,277,797	11,277,797
Restricted assets	3,098,726	3,098,726
Cash and cash equivalents at end of period	<u>\$ 14,376,523</u>	<u>\$ 14,376,523</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF MAY 1 TO MAY 31, 2021
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING MAY 31, 2021</u>	<u>YEAR TO DATE</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	\$ (468,199)	\$ (2,326,942)
(Increase) decrease in net accounts receivable	(378,225.00)	1,849,514
(Increase) decrease in accrued revenue	(1,047,515)	465,458
(Increase) decrease in prepaid expenses	10,011	(10,011)
(Increase) decrease in inventory - renewable energy credits	-	-
(Increase) decrease in other assets and deposits	-	(4,343)
Increase (decrease) in accounts payable	13,711	(189,713)
Increase (decrease) in accrued payroll	4,737	26,688
Increase (decrease) in due to member agencies	21,874	(14,933)
Increase (decrease) in accrued cost of electricity	970,012	(487,692)
Increase (decrease) in other accrued liabilities	(5,792)	(2,142,444)
Increase (decrease) security deposits with energy suppliers	37,000	1,780,000
Increase (decrease) in user taxes and energy surcharges	(21,896)	(17,065)
Net cash provided (used) by operating activities	<u>\$ (864,282)</u>	<u>\$ (1,071,483)</u>

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2021
FOR THE YEAR TO DATE ENDING 05-31-2021

GL#	Description	5/31/2021	5/31/2021	YTD Variance	% over/-under
		YTD FY2021 Actuals	YTD FY2021 Budget		
301.00	Electric Revenue	\$ 49,336,178	\$ 43,917,841	\$ 5,418,336	12%
311.00	Interest Revenues	47,531	122,475	(74,944)	-61%
415.00	Purchased Power	47,705,944	42,875,149	4,830,795	11%
	Labor & Benefits	1,040,237	1,039,442	796	0%
451.10	Salaries & Wages/Benefits	765,405	795,143	(29,738)	-4%
451.20	Contract Labor	161,095	120,478	40,617	34%
453.41	Human Resources & Payroll	113,737	123,820	(10,083)	-8%
	Office Supplies & Other Expenses	144,421	134,593	9,828	7%
452.10	Technology Costs	34,648	19,704	14,943	76%
452.15	Office Supplies	1,862	2,112	(250)	-12%
452.25	Travel	-	5,588	(5,588)	-100%
452.30	CalCCA Dues	105,536	105,539	(3)	0%
452.35	Memberships	2,375	1,650	725	44%
	Contractual Services	2,444,949	2,736,259	(291,309)	-11%
453.10	LEAN Energy	15,545	22,000	(6,455)	-29%
453.15	Don Dame	4,201	9,167	(4,966)	-54%
453.20	SMUD - Credit Support	543,590	514,210	29,380	6%
453.21	SMUD - Wholesale Energy Services	527,692	528,509	(817)	0%
453.22	SMUD - Call Center	695,879	692,296	3,583	1%
453.23	SMUD - Operating Services	138,343	256,909	(118,567)	-46%
	Legal PG&E Bankruptcy	-	22,550	(22,550)	-100%
	Legal General Counsel	31,304	135,300	(103,996)	-77%
453.36	Regulatory Counsel	184,395	174,086	10,309	6%
453.37	Joint CCA Regulatory counsel	19,218	28,188	(8,969)	-32%
453.38	Legislative Support	55,000	56,375	(1,375)	-2%
453.40	Accounting Services	21,235	22,550	(1,315)	-6%
453.42	Audit Fees	43,100	59,963	(16,863)	-28%
453.60	PG&E Acquisition Consulting	849	-	849	100%
459.05	Marketing Outreach	164,600	214,157	(49,558)	-23%
	Rents & Leases	15,342	16,109	(767)	-5%
457.10	Hunt Boyer Mansion	18,484	16,109	2,375	15%
	Other A&G	307,213	337,253	(30,041)	-9%
459.10	PG&E Data Fees	284,442	252,275	32,168	13%
459.15	Community Engagement Activities & Sponsorships	2,359	5,638	(3,279)	-58%
459.20	Insurance	5,422	6,914	(1,492)	-22%
459.08	New Member Expenses	-	59,500	(59,500)	-100%
459.70	Banking Fees	14,990	1,128	13,862	1229%
	Program Costs	-	11,800	(11,800)	-100%
463.00	Miscellaneous Operating Expenses	5,338	5,762	(423)	-7%
463.99	Contingency	-	213,471	(213,471)	-100%
	TOTAL OPERATING EXPENSES	\$ 51,663,444	\$ 47,358,037	\$ 4,305,407	9%
481.10	Interest on RCB loan	51,459	52,396	(937)	-2%
482.10	Interest Expense - SMUD	431	646	(215)	-33%
	NET INCOME	\$ (2,331,625)	\$ (3,370,763)	\$ 1,039,138	-31%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: July 8, 2021

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:

June was extremely active in the Capitol as the Legislature and Governor worked through budget negotiations, legislation was considered by policy committees in the second house, and the Capitol building officially reopened to the public.

Policy bills played second fiddle to the budget process as the Legislature faced the June 15 deadline to pass a budget and send the proposal to the Governor. The Legislature met that deadline, sort of, as the June 15 budget proposal contained many placeholder appropriations. Funding amounts that the Senate and Assembly agreed upon were adopted but expenditure details were held over to future negotiations, which continued through the end of the month. The Legislature then passed another budget bill on June 28 that updated the June 15 proposal but still does not constitute a final proposal. Budget negotiations continue on funding for drought, wildfire, climate resilience, and clean energy to name a few. The budget does include nearly \$1 billion to reduce delinquent electricity and natural gas utility bill balances for customers experiencing financial hardship due to the pandemic. Details of how these funds will be implemented are still under negotiation.

The latter half of June saw the committee hearing process for policy bills ramp up, which continues until mid-July concluding when the Legislature begins its summer recess on July 16. As noted in the June Legislative Update, both the Senate and Assembly employed a stricter 12 bill limit on the number of bills each legislator may move in the 2021 session and the number of bills still alive at this point in the session has been reduced.

Lastly, the Capitol building reopened in limited capacity in conjunction with the June 15 “reopening” of the state’s economy. Up to 500 members of the public may now roam the hallways of the building, attend committee hearings, and attempt to have in-person meetings with legislators and their staff. Many legislative offices are locking their doors and not permitting impromptu face-to-face meetings as concerns of spreading COVID-19 remain. Just this week it has been reported that several Assembly staff tested positive for COVID-19 and all had been working in the Capitol.

VCE’s current legislative efforts are concentrated on the following two bills, both of which made significant progress in the month of April:

1. SB 612 (Portantino). Electrical Corporations. Allocation of Legacy Resources.

Summary: 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.

Despite requests from Senator Portantino and CalCCA and its members to have SB 612 set for a hearing, the bill currently is not scheduled for a hearing in Assembly Utilities & Energy (U&E) Committee and is headed toward being a two-year bill. Opposition from the TURN, PG&E, SCE, and the Coalition of CA Utility Employees has seemed to convince U&E Chair Chris Holden to effectively kill SB 612 for the year by not granting the bill a hearing. The recent CPUC decision is the biggest obstacle as the Chair and committee seem unwilling to overturn a CPUC decision that was just issued. There has yet to be an argument that CCA customers are not entitled to and should not receive the RA and GHG-free attributes the bill seeks in any of the meetings with committee members and staff, and without a committee hearing to debate the merits of SB 612 to find resolution.

Additional Information

- VCE Position: Support
- CalCCA Position: Sponsor
- Next hearing: The bill is in Assembly Utilities & Energy Committee, a hearing date has not yet been set.
- 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.

AB 843 continues to work its way through the legislative process and will be heard in the Senate Energy, Utilities & Communications (EUC) Committee on July 12. Negotiations of amendments continue to be

discussed with the IOUs to ensure that CCAs role in the BioMAT program is for project procurement only and does not change the program otherwise.

Additional Information

- VCE Position: Support
- CalCCA Position: Support
- The bill is being co-sponsored by MCE and Pioneer Community Choice Energy.
- Next hearing: The bill will be heard on July 12, 2021, in the Senate Energy, 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 gigawatthours of operational long-term backup electricity, as specified, by December 31, 2030, and (2) a target of at least an additional 5 gigawatthours 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.	Held in Asm. U&E This bill is now a 2-year bill	None	None
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	Sen. Gov. & Finance Hearing - 7/12	Developing Position	None

	<p>or recommended measures to promote social distancing, and during a declared local emergency provided the legislative body makes certain determinations by majority vote.</p>			
<p>AB 427 (Bauer-Kahan)</p>	<p>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.</p>	<p>Held in Asm. Appropriations This bill is now a 2-year bill</p>	<p>Watch</p>	<p>Watch</p>
<p>AB 1088 (Mayes)</p>	<p>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 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.</p>	<p>Held in Asm. U&E This bill is now a 2-year bill</p>	<p>Developing Position</p>	<p>Support if Amended</p>

<p>AB 1161 (E. Garcia)</p>	<p>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 goals by:</p> <p>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 (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.</p>	<p>Held in Asm. U&E This bill is now a 2-year bill</p>	<p>Developing Position</p>	<p>Oppose Unless Amended</p>
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<p>SB 67 (Becker)</p>	<p>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.</p>	<p>Held in Sen. EUC This bill is now a 2-year bill</p>	<p>Developing Position</p>	<p>None</p>
<p>SB 99 (Dodd)</p>	<p>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.</p>	<p>Passed Asm. U&E on consent</p>	<p>Support</p>	<p>None</p>
<p>SB 204 (Dodd)</p>	<p>Places the Base Interruptible Program (BIP) into statute. The BIP is an emergency electricity demand response program established by a proceeding years ago. The program is regulated by the PUC and used as a last line of defense 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.</p>	<p>Held on Sen. Appropriations Suspense File This bill is now a 2-year bill</p>		<p>Watch</p>

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: July 8, 2021

Please find attached Keyes & Fox’s June 2021 Regulatory Memorandum dated June 30, 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 June 30, 2021.

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance (“VCE”) Board of Directors

From: Sheridan Pauker, Partner, Keyes & Fox, LLP
Tim Lindl, Partner, Keyes & Fox LLP
Ben Inskeep, Principal Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: June 30, 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:

- **IRP Rulemaking:** On June 24, 2021, the CPUC approved D.21-06-035, imposing an 11,500 MW by 2026 procurement mandate for new or incremental net qualifying capacity on LSEs to be met through long-term (10 year or longer) contracts. VCE’s share of the overall incremental new procurement obligation is 44 MW by 2026.
- **Direct Access Rulemaking:** On June 24, 2021, the CPUC approved D.21-06-033, recommending against any re-opening of Direct Access at this time. This proceeding is now closed.
- **RA Rulemaking (2021-2022):** The CPUC issued a Proposed Decision on Track 3B.2 issues, which, if approved, would restructure RA to ensure load will be met in all hours of the day, and change RA to a seasonal, rather than a monthly, obligation. On June 24, 2021, the CPUC approved D.21-06-029, significantly increasing greater Bay Area local capacity requirements for 2022-2024, setting flexible capacity requirements for 2022, making changes to Maximum Cumulative Capacity (MCC) buckets, including resource availability on Saturdays and changes to the valuation of DR, adopting a new points-based penalty structure, and making other significant refinements to the RA program addressing issues scoped as Track 3B.1 and Track 4.
- **PG&E 2022 ERRA Forecast:** On June 1, 2021, PG&E filed its 2022 ERRA Forecast application, preliminarily forecasting that in 2022 the system average bundled service customer rate will increase by 2.4%, the system average Direct Access and CCA rate will decrease by 9.6%, and the departing load rate will increase by 1.7%. VCE’s customers’ PCIA rates will decrease, on average, by \$0.01872/kWh.
- **RPS Rulemaking:** Parties filed comments and replies in response to the April 22, 2021 Ruling on the ReMAT program. On June 24, 2021, the CPUC approved Resolution E-5143, modifying the RPS citation rules and penalty amounts for non-compliance. VCE’s Draft 2021 RPS Plan is to be filed on July 1, 2021.

- **PG&E's 2019 ERRA Compliance:** The ALJ issued a Proposed Decision on Track 1 issues, and parties filed opening comments.
- **PCIA Rulemaking:** Parties filed comments on a Ruling providing Energy Division's proposal regarding the timeline for issuing Market Price Benchmark calculations used in the annual ERRA Forecast proceedings to calculate the PCIA. On June 23, 2021, CalCCA and several CCAs jointly filed an Application for Rehearing of the Phase 2 Decision, D.21-05-030.
- **Ensuring Summer 2021 Reliability:** The ALJ issued a Ruling directing PG&E and the California Environmental Justice Alliance to update their respective demand response program proposals for further consideration. On June 24, 2021, the CPUC approved D.21-06-027, modifying D.21-03-056 with respect to the day-of trigger in the emergency load reduction program (ELRP) by resolving an inconsistency in the decision.
- **PG&E's Phase 2 GRC:** Parties filed reply briefs on issues except for real-time pricing. The ALJ issued a Ruling directing PG&E to provide an exhibit containing illustrative rates and bill impacts resulting from several specified marginal cost scenarios.
- **Provider of Last Resort Rulemaking:** A prehearing conference was held June 11, 2021.
- **2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking:** The Assigned Commissioner issued a Scoping Memo and Ruling.
- **PG&E's 2020 ERRA Compliance:** The Assigned Commissioner issued a Scoping Memo and Ruling.
- **PG&E Regionalization Plan:** No updates this month. The ALJ held a status conference on May 18, 2021.
- **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 April 15, 2021, the CPUC issued Resolution M-4852, placing PG&E into Step 1 of the Enhanced Oversight and Enforcement process it established when approving PG&E's bankruptcy plan of reorganization.
- **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.

IRP Rulemaking

On June 24, 2021, the CPUC approved D.21-06-035, imposing an 11,500 MW by 2026 procurement mandate for new or incremental net qualifying capacity on LSEs to be met through long-term (10 year or longer) contracts. VCE's share of the overall new procurement obligation is 44 MW.

- **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 clarified 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: D.21-06-035 establishing the 11,500 MW by 2026 procurement mandate resolved many of the procurement track issues. However, the CPUC will conduct additional quantitative and qualitative analysis in the next few months to help

inform the preferred system portfolio (PSP) decision, expected by the end of 2021, where it may consider additional capacity procurement requirements, including the possibility of additional fossil fuel procurement.

- 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 on 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 D.21-06-035 establishes a new procurement mandate of 11,500 MW of additional zero-emitting or RPS-eligible net qualifying capacity to be procured by 2026 by LSEs through long-term (10 or more years) contracts. In contrast to the initial proposed decision, the adopted Decision did not include a procurement mandate on IOUs for additional fossil fuel resources. It specifically orders that the resources from Diablo Canyon be replaced with at least 2,500 MW of zero-emitting resources. In addition, it specifies that 2,000 MW of the procurement mandate required for 2026 must be “long-lead-time” (LLT) resources, with half coming from long-duration storage and the other half from zero-emitting resources with an 80% or greater capacity factor, with the Decision pointing to geothermal and biomass as the resources best-suited to meet this category. Capacity factor measures how often a generating facility runs and is calculated by dividing the actual electricity output by the maximum possible output over a period of time. VCE’s new obligations and a description of the specific resource requirements for each subcategory of procurement are detailed in the following table.

Table: VCE New & Additional Procurement Obligations Under D.21-06-035

	2023	2024	2025	2026 (Long-Lead Time Resources)		Diablo Replacement	Total
				Long-Duration Storage	Zero-Emitting Generation Resources	Minimum zero-emitting capacity by 2025 (subset of 2023, 2024, and 2025 columns)	
VCE Obligation (September NQC MW)	8	23	6	4	4	10	44
Resource Requirements	Zero-emitting or RPS eligible	Zero-emitting or RPS eligible	Zero-emitting or RPS eligible	Must be able to discharge at maximum capacity over at least an eight-hour period from a single resource.	Zero-emitting resources or those that otherwise qualify as eligible under the RPS program and have at least an 80% capacity factor. Must be a generating resource, not storage, able to generate when needed, for as long as needed. Must not be use limited or weather dependent. May not have any on-site emissions, except if the resource otherwise qualifies under the RPS.	(1) Be from a generation resource, a generation resource paired with storage (physically or contractually), or a demand response resource; (2) Be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 through the end of hour ending 2200), Pacific Time, at a minimum; and (3) Be able to deliver at least 5 megawatt-hours of energy during each of these daily periods for every megawatt of incremental capacity claimed.	

To calculate individual resource contributions to the required capacity, marginal ELCC values will be used and all capacity values will be based on September Net Qualifying Capacity. Commission staff will finalize the marginal ELCC values that will be used to count the procurement required to be online in 2023 and 2024 by no later than August 31, 2021. Commission staff will also provide guidance on what resource counting LSEs should assume for geothermal, long duration storage, out-of-state wind, and offshore wind for online years through 2028.

IRP 2030 GHG Target: The PD states (p.19) that the CPUC “strongly anticipate[s] the adoption of those [LSE IRP] plans that achieve the 38 MMT GHG limit by 2030, assuming that the aggregated portfolio of all LSEs achieves the necessary reliability levels.” LSEs were required to provide IRP scenarios under both a 38 MMT and 46 MMT GHG limit by 2030 in their IRPs filed in September 2020. Note that the 38 MMT a significant decrease from the 46 MMT scenario that had previously been assumed to be the base case for 2030 GHG planning in IRPs.

Allocation of the Procurement Mandate Across LSEs: To allocate LSE procurement requirements, for IOUs and CCAs, D.21-06-035 used updated LSE load forecasts. **VCE is permitted to use resources that were not online or in-development and contracted and approved by its Board as of June 30, 2020 to count towards its procurement requirements** (i.e., contracts approved by the VCE Board and executed after June 30, 2020, can count towards VCE’s procurement mandates).

Compliance: LSEs will **not** be given the option to opt out up front from providing their proportional share of the capacity required by D.21-06-035. LSEs will be required to submit procurement information twice annually to show progress toward the capacity procurement requirements in this decision. Backstop procurement to be conducted by the IOUs may be ordered by the CPUC once

annually, with the costs allocated to the deficient LSEs and/or their customers. Deficient LSEs will be subject to penalties for failing to deliver the capacity required in 2023-2025 at the level of the net cost of new entry. Penalties will not be assessed on any LSE failing to procure the LLT resources required in 2026; LSEs showing a good faith effort to procure these resources may be granted an extension until 2028 before facing potential penalties. The February 1, 2023 compliance filing will be the first check on the status of LLT resource procurement.

- **Analysis:** D.21-06-035 substantially increased the total amount of procurement required compared to the 7,500 MW proposed in a February 2021 Ruling. It creates new and additional procurement obligations and associated compliance obligations on VCE, including procurement of long-duration storage and zero-emitting resources with high capacity factors. A portion of VCE's overall obligations under D.21-06-035 may have already been achieved through contracts VCE has executed since June 30, 2020, although the carve-outs for specific resource types (e.g., long-duration storage) would require additional procurement.
- **Next Steps:** The schedule is as follows:
 - Procurement track: No next steps at this time.
 - General IRP oversight issues: A Proposed Decision on moving from two-year to three-year IRP cycle is anticipated to be issued soon.
 - Preferred System Portfolio Development: A ruling proposing PSP is anticipated in the coming months, followed by a proposed decision in Q3 2021 and a final decision by the end of 2021.
- **Additional Information:** [D.21-06-035](#) establishing a 11,500 MW by 2026 procurement mandate (June 24, 2021); [Ruling](#) Setting August 1, 2021 Procurement Compliance Deadline (April 9, 2021); [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); [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](#).

Direct Access Rulemaking

On June 24, 2021, the CPUC approved D.21-06-033, recommending against any re-opening of Direct Access. This proceeding is now closed.

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

In Phase 2, the CPUC addressed the SB 237 mandate requiring the CPUC to 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 was required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies as follows:

- Be consistent with the state's GHG emission reduction goals, specifically the RPS and IRP process.
- Not increase criteria air pollution or toxic air contaminants.

- Ensure electric system reliability and specifically be consistent with the RA and IRP programs.
- Not cause undue cost shifting to bundled service customers or direct transaction customers, specifically the PCIA and other mechanisms used to prevent cost shifting.

Details: D.21-06-033 recommends against any further Direct Access expansion at this time based primarily on a concern that doing so "would present an unacceptable risk to the state's long-term reliability goals." The PD observes that after considering recent reliability events (i.e., the summer 2020 heat storm and resulting rolling blackouts in California and February 2021 outage event and skyrocketing electricity prices in Texas) and IRP forecasts for additional generation, expanded direct access would result in further system fragmentation that raises serious electric system reliability concerns. Further portions of the Decision:

- Observe that Direct Access providers do not have a track record of relying on long-term contracts to meet their energy needs, which could impede the development of new, needed resources.
 - Note that allowing expansion could undermine the long-term contracts that LSEs such as CCAs have already entered (i.e., due to load migration) and make it difficult for them to enter new contracts.
 - State that currently, the CPUC is not able to ensure that Direct Access expansion would not increase GHG emissions and other pollutants when compared to retaining the current cap, as Direct Access providers have historically relied primarily on unspecified power and lead to a net decline in clean energy procurement.
- **Analysis:** This proceeding determined the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California. The Decision recommending against expansion of Direct Access at this time could reduce the risk of load migration from CCAs (or IOUs) to ESPs.
 - **Next Steps:** This proceeding is now closed.
 - **Additional Information:** [D.21-06-033](#) recommending against direct access expansion (approved June 24, 2021); [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 (2021-2022)

On June 10, 2021, the CPUC issued a Proposed Decision (PD) on Track 3B.2 issues, which address broader RA capacity structure changes. Parties filed comments on the PD on June 30, 2021. On June 24, 2021, the CPUC approved D.21-06-029, adopting local capacity requirements for 2022-2024, flexible capacity requirements for 2022, and refinements to the RA program addressing issues scoped as Track 3B.1 and Track 4.

- **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:** The **Proposed Decision on Track 3B.2** would reject CalCCA/SCE's proposal for restructuring the RA program, and would instead find that PG&E's "slice-of-day" proposal best addresses the identified principles and the concerns with the current RA framework and if is further developed, is best positioned to be implemented in 2023 for the 2024 compliance year. Therefore, it would direct parties to collaborate to develop a final restructuring proposal based on PG&E's slice-of-day proposal through a series of workshops.

PG&E Slice of Day Framework is to establish RA requirements based on a "slice-of-day" framework, which seeks to ensure load will be met in all hours of the day, not just during gross peak demand hours. The proposal also attempted to ensure there is sufficient energy on the system to charge energy storage resources. The proposed framework would establish RA requirements for multiple slices-of-day across seasons and would establish a counting methodology to reflect an individual resource's ability to produce energy during each respective slice (e.g., six four-hour periods of the day). To avoid administrative burdens associated with slice-of-day requirements for each month, PG&E recommended moving from a monthly RA obligation to a seasonal obligation.

The PD would direct parties to develop a final RA restructuring proposal by holding at least five workshops over the next approximately six months to develop implementation details based on PG&E's slice-of-day proposal. The workshops should cover the following implementation details: (1) Structural Elements; (2) Resource Counting; (3) Need Determination and Allocation; (4) Hedging Component; and (5) Unforced Capacity Evaluation (UCAP) and Multi-Year Requirement Proposals. An opportunity to comment will follow the workshops. The Commission would consider the final proposed framework and intend to issue a decision in the third quarter of 2022 with details for implementation in 2023 for the 2024 RA compliance year.

D.21-06-029 resolved Track 3B.1 and Track 4 issues, establishing the following:

2022-2024 Local Capacity Requirements: D.21-06-029 adopts the CAISO LCR Study requirements for 2022-2024 for all local areas, but states agreement with CalCCA and PG&E that there is value in continuing the previously established LCR Working Group. The LCR Working Group is directed to submit its report into the successor RA proceeding by February 2022 addressing a series of issues including LCR reliability criteria.

2022 Flexible Capacity Requirements: D.21-06-029 adopts the amounts from the CAISO's Final FCR report, noting that on brief review (since the final CAISO report was filed on May 14, 2021) the amounts appear to be reasonable.

2022 System Requirements & Planning Reserve Margin (PRM): This section of D.21-06-029 focuses on the PRM, which the CPUC increased from 15% to 17.5% on an interim basis for 2021 and 2022 in D.21-03-056, pending any further modifications in this proceeding. In D.21-06-029, the CPUC states agreement with parties opposing a further increase in the summer 2022 PRM, noting that the Energy Division has been authorized to facilitate a working group to develop assumptions for use in a loss of load expectation (LOLE) study, and that the study will be issued in the coming months for consideration in a future phase of the proceeding. Accordingly, it retains the 17.5% PRM for summer 2022.

Maximum Cumulative Capacity (MCC) Buckets: D.21-06-029 adopts a series of changes to the MCC buckets, which function as limits on the amount of RA that may be procured from resources with different characteristics. The revisions and other determinations include the following:

- All buckets will require availability of a resource on Saturday for the 2022 RA compliance year given the Summer 2020 experience with extreme peak loads occurring on some weekend days. This has the effect of modifying the DR and Categories 1 and 2 buckets to add Saturday. DR contracts with an execution date prior to the effective date of D.21-

06-029 will be grandfathered and not subject to the new Saturday availability requirement specified in the PD.

- Revising the Category 1 availability criteria (4 consecutive hours of availability from 4-9 p.m. from May-September) to increase the monthly minimum availability from 40 hours to 100 hours (and 96 hours for February) and to require year-round availability.
- Declining to adopt the Energy Division's proposal to eliminate Category 2 (available from 8 to 16 hours daily) due to a lack of sufficient justification.
- Retaining the DR Category cap at 8.3% at the LSE level, declining to adopt an expanded or lowered cap or other changes proposed by different parties.

DR QC Methodology: A related issue centers on refinements to how the qualifying capacity of DR resources is determined, related in part to concerns that DR is being overvalued in the current load impact protocol (LIP) system. The Energy Division had proposed an interim 5% derate to DR QC for 2022 pending further analysis. Rather than proceed to the ELCC methodology proposed by the CAISO, or the derate proposed by the Energy Division, D.21-06-029 requests that the CEC launch a stakeholder working group process as part of the 2021 IEPR and make recommendations on several topics intended to support a comprehensive and consistent DR measurement and verification strategy. The recommendations are requested by March 18, 2022, to be considered for implementation during the 2023 RA compliance year.

Demand Response Adders: Currently DR resources are credited with capacity adders based on the PRM (15%) and transmission and distribution loss factors to account for avoided reserves and reduced losses relative to transmission-connected supply resources.

RA Penalties: D.21-06-029 adds a new RA deficiencies penalty structure to the current penalty structure, layering on a penalty multiplier for repeat RA deficiencies based on a point system in which 1 point is accrued for non-summer RA deficiencies and 2 points are accrued for summer RA deficiencies. Penalties would be doubled when the accrued number of points is 6-10 and tripled when the accrued points are 11 or greater. Deficiencies of less than 1% of the LSE's system RA requirement will not result in points being accrued. Points under the new penalty system will only be accrued for month-ahead deficiencies, not year-ahead deficiencies, will expire 24 months after the violation, and the provider of last resort will not accrue points from unexpected load returns for which a system RA waiver is granted. This structure will be effective for the 2022 RA compliance year.

- **Analysis:** The Proposed Decision on Track 3B.2 issues could result in major changes to the RA program structure beginning in the 2024 RA compliance year. The new structure would seek to ensure load (including energy storage charging) will be met in all hours of the day, not just during gross peak demand hours and would move RA from a monthly compliance obligation to a seasonal obligation. The details of the framework would be further fleshed out through the specified workshop process and later approved by the Commission.

D.21-06-029 provides a series of refinements to the RA program that could impact VCE's RA obligations and compliance. The Local capacity requirements for the Greater Bay Area are significantly higher for 2022-2024 than those previously adopted for 2021-2023. The changes to RA penalties go into effect in the 2022 RA compliance year and would result in significant increases for repeated RA non-compliance. In addition, changes to the MCC buckets go into effect for the 2022 RA compliance year and impact the eligibility requirements of DR resources and change resource availability hours, and require availability on Saturdays. A working group will be established to make recommendations regarding DR measurement and verification changes that could take effect in RA compliance year 2023. Finally, the overall local and flexibility capacity requirements that are established will be used to set VCE's specific RA requirements.

- **Next Steps:** Reply comments on the PD are due July 5, 2021, and the PD may be heard, at the earliest, at the Commission's July 15 meeting.

- Additional Information:** [D.21-06-029](#) adopting local capacity obligations for 2022-2024, flexible capacity obligations for 2022, and refinements to the RA program (approved June 24, 2021); [Proposed Decision](#) on Track 3B.2 (June 10, 2021); [2022 Final Flexible Capacity Needs Assessment](#) (May 14, 2021); [2022 Final Local Capacity Technical Study Report](#) (April 30, 2021); [Ruling](#) providing Energy Division’s demand response proposal (April 19, 2021); [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); [Scoping Memo and Ruling](#) (January 22, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

PG&E 2022 ERRA Forecast

On June 1, 2021, PG&E filed its 2022 ERRA Forecast application, requesting a 2022 ERRA forecast revenue requirement for ratesetting purposes of \$4.736 billion. After accounting for \$2.479 billion of Utility Owned Generation (UOG)-Related Costs and amounts related to capped 2020 departing load PCIA rates addressed in D.20-12-038, PG&E is requesting a revenue requirement request in this application of \$2.263 billion.

- Background:** Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates.
- Details:** PG&E preliminarily forecasts that in 2022 the system average bundled service customer rate will increase by 2.4%, the system average DA and CCA rate will decrease by 9.6%, and the departing load rate will increase by 1.7%. VCE’s customers’ PCIA rates will decrease, on average, by \$0.01872/kWh (2017 PCIA Vintage). Consistent with D.21-05-030, PG&E has removed the capping and triggering mechanisms for PCIA rates in this 2022 ERRA Forecast Application. PCIA rates for the 2009 through 2022 customer vintages include PCIA base rates, formerly referred to as uncapped PCIA rates in the 2021 ERRA Forecast Application, plus PUBA rate adders for each vintage. Proposed 2022 PCIA rates, inclusive of the PUBA adder, are shown in the table below.

TABLE 20-4
 PROPOSED POWER CHARGE INDIFFERENCE ADJUSTMENT RATES BY CLASS AND VINTAGE APPLICABLE TO POWER CHARGE
 INDIFFERENCE ADJUSTMENT -ELIGIBLE DEPARTING LOAD CUSTOMERS (WITH DWR FRANCHISE FEE)
 (\$/KWH)

Line No.	Customer Class	2009 Vintage	2010 Vintage	2011 Vintage	2012 Vintage	2013 Vintage	2014 Vintage	2015 Vintage	2016 Vintage	2017 Vintage	2018 Vintage	2019 Vintage	2020 Vintage	2021 Vintage	2022 Vintage
1	Residential	\$0.01962	\$0.02508	\$0.02641	\$0.02901	\$0.02812	\$0.02825	\$0.02810	\$0.02845	\$0.02817	\$0.02858	\$0.02810	\$0.02484	\$0.03364	\$0.03364
2	Small L&P	\$0.01875	\$0.02397	\$0.02523	\$0.02772	\$0.02687	\$0.02700	\$0.02685	\$0.02719	\$0.02692	\$0.02731	\$0.02685	\$0.02374	\$0.03214	\$0.03214
3	Medium L&P	\$0.02022	\$0.02585	\$0.02721	\$0.02990	\$0.02897	\$0.02912	\$0.02896	\$0.02932	\$0.02903	\$0.02945	\$0.02896	\$0.02560	\$0.03467	\$0.03467
4	B19/E19	\$0.01880	\$0.02403	\$0.02530	\$0.02780	\$0.02694	\$0.02707	\$0.02692	\$0.02727	\$0.02699	\$0.02739	\$0.02693	\$0.02380	\$0.03224	\$0.03224
5	Streetlights	\$0.01563	\$0.01998	\$0.02103	\$0.02311	\$0.02240	\$0.02250	\$0.02238	\$0.02266	\$0.02244	\$0.02276	\$0.02238	\$0.01979	\$0.02679	\$0.02679
6	Standby	\$0.01409	\$0.01801	\$0.01896	\$0.02083	\$0.02019	\$0.02028	\$0.02017	\$0.02043	\$0.02022	\$0.02052	\$0.02018	\$0.01784	\$0.02415	\$0.02415
7	Agriculture	\$0.01777	\$0.02271	\$0.02391	\$0.02627	\$0.02546	\$0.02558	\$0.02544	\$0.02576	\$0.02550	\$0.02587	\$0.02544	\$0.02249	\$0.03046	\$0.03046
8	B20/E20 T (Excluding F	\$0.01607	\$0.02053	\$0.02162	\$0.02375	\$0.02302	\$0.02313	\$0.02300	\$0.02329	\$0.02306	\$0.02340	\$0.02301	\$0.02034	\$0.02754	\$0.02754
9	B20/E20 P (Excluding F	\$0.01721	\$0.02200	\$0.02316	\$0.02545	\$0.02466	\$0.02478	\$0.02464	\$0.02496	\$0.02471	\$0.02507	\$0.02465	\$0.02179	\$0.02950	\$0.02950
10	B20/E20 S (Excluding F	\$0.01794	\$0.02294	\$0.02415	\$0.02653	\$0.02571	\$0.02584	\$0.02569	\$0.02602	\$0.02576	\$0.02613	\$0.02570	\$0.02272	\$0.03076	\$0.03076
11	BEV1	\$0.01597	\$0.02042	\$0.02150	\$0.02362	\$0.02289	\$0.02300	\$0.02287	\$0.02316	\$0.02293	\$0.02326	\$0.02288	\$0.02022	\$0.02738	\$0.02738
12	BEV2	\$0.01865	\$0.02384	\$0.02510	\$0.02758	\$0.02673	\$0.02686	\$0.02671	\$0.02705	\$0.02677	\$0.02717	\$0.02671	\$0.02361	\$0.03198	\$0.03198
13	System Average PCIA Rate by Vintage	\$0.01886	\$0.02411	\$0.02539	\$0.02789	\$0.02704	\$0.02717	\$0.02702	\$0.02736	\$0.02709	\$0.02748	\$0.02703	\$0.02391	\$0.03231	\$0.03231

- Analysis:** This proceeding will establish the amount of the PCIA for VCE’s 2022 rates and the level of PG&E’s generation rates for bundled customers. The illustrative PCIA rates filed by PG&E suggest a significant decrease in the PCIA for 2022, but these rates will change based on PG&E’s November Update filing. For comparison, VCE residential customers’ current (2021) PCIA charge is \$0.04760/kWh and the proposed residential PCIA rate for 2022 is \$0.02817/kWh.

- **Next Steps:** Protests or responses to PG&E’s application are due July 3, 2021. PG&E anticipates updating the revenue requirements and its rate proposal on November 8, 2021.
- **Additional Information:** [Application](#) (June 1, 2021); Docket No. [A.21-06-001](#).

RPS Rulemaking

On June 9, 2021, and June 23, 2021, respectively, parties filed comments and replies in response to the April 22, 2021 Ruling on the ReMAT program. On June 24, 2021, the CPUC approved Resolution E-5143, modifying the RPS citation rules and penalty amounts for non-compliance.

- **Background:** This proceeding addresses ongoing RPS issues. VCE submitted its Final 2020 RPS Procurement Plan on February 19, 2021, and its 2019 RPS Compliance Report on August 3, 2020. Draft 2021 RPS Plans are due July 1, 2021.

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:** Resolution E-5143 authorizes the CPUC to penalize retail sellers for non-compliance with requirements for RPS Procurement Plans, as well as penalties for non-compliance with RPS reporting requirements and non-responsiveness to requests for information by Staff related to the implementation and administration of the RPS program. It was revised prior to approval to clarify that deficient *draft* RPS Plans, such as the one due July 1, 2021, are not subject for referral for citation. Resolution E-5143 also describes the process for challenging a penalty under the RPS Citation Program and details the applicable penalties for specified violations.

The April 22 Ruling requested responses to a series of questions, including whether other retail sellers, such as CCAs, should be eligible to participate in the ReMAT program. It also requests information as to whether modifications are needed to allow renewable systems paired with storage to be eligible under ReMAT. CalCCA filed comments in response, recommending that retail sellers like CCAs be allowed to participate in the ReMAT program and arguing that costs and benefits of ReMAT should be fairly allocated to prevent cost shifting.

- **Analysis:** VCE plans to submit its draft 2021 RPS Procurement Plan on July 1, 2021 and is well positioned to achieve its RPS compliance obligations, having already procured the majority of its RPS obligations for the both the current 2021-2024 compliance period and for future compliance periods through 2030. Resolution E-5143 expands the RPS citation program to allow the CPUC to issue penalties related to non-compliance with requirements for RPS Plans, among other violations with the RPS program.
- **Next Steps:** Draft 2021 RPS Procurement Plans are due July 1, 2021, and the 2020 RPS Compliance Report is due August 2, 2021. Comments on the draft 2021 RPS Procurement Plans are due July 30, 2021, reply comments are due August 8, 2021, and motions to update draft 2021 RPS Procurement Plans are due August 9, 2021. A PD aligning RPS and IRP filings is anticipated to be issued soon, followed by an opportunity for comments and reply comments
- **Additional Information:** [Ruling](#) aligning IOU RPS Procurement Plan requirements with PCIA decision (May 26, 2021); [Ruling](#) extending deadline for draft 2021 RPS Procurement Plan (May 7, 2021); [Draft Resolution E-5143](#) on RPS Citation Program (April 23, 2021); [Ruling](#) on ReMAT

program (April 22, 2021); [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); [Ruling](#) on [Staff proposal](#) aligning RPS/IRP filings (September 18, 2020); [D.20-08-043](#) resuming and modifying the BioMAT program (September 1, 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](#).

PG&E's 2019 ERRa Compliance

On June 10, 2021, the ALJ issued a Proposed Decision on Track 1 issues. Parties filed opening comments on the PD on June 30, 2021.

- 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 Phase 1 PD would approve a Settlement Agreement entered by all the parties that actively participated in Phase 1 of the proceeding. The Settlement Agreement resolves all but two contested issues between the parties. As described in more detail below, for the two contested issues, the PD would find that PG&E must (1) use the same methodology approved in D.20-02-047 (2020 ERRa decision) to calculate the Retained RPS adjustment and update the RPS adjustment with actual 2019 recorded sales data, and (2) retain the same PCIA vintage years for the power purchase agreements PG&E amended in 2019.

On the first contested issue, PG&E had argued that the appropriate amount that should be transferred from the PABA to the ERRa should be \$69.3 million, and that the \$92.9 million figure ordered in the 2020 ERRa Forecast Decision was erroneous. The Joint CCAs argued that the correct adjustment should be \$95.3 million, calculated using actual 2019 recorded sales. The PD would agree with the Joint CCAs and order PG&E to transfer \$95.3 million, including any

associated interest retroactive to January 2019, from the PABA to the ERRA, as a result of updating the Retained RPS adjustment that was ordered in the 2020 ERRA Forecast Decision with actual 2019 recorded sales data.

On the second contested issue, Joint CCAs had argued that that the vintage year certain RPS PPAs, which are PCIA-eligible, should be changed to 2019, the year in which the contracts were renegotiated. PG&E asserted that, in the Resolutions approving the renegotiated PPAs, the CPUC had authorized PG&E to retain the existing vintages for the amended PPAs. The PD finds that the Resolution had addressed the amended PPA vintaging issue and that it was therefore not appropriate to address these issues in the current proceeding.

- **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 PD would side with the Joint CCAs on this issue of the appropriate amount that should be transferred from the PABA to the ERRA, further reducing the level of the PCIA for VCE customers. It would side with PG&E on the issue of retaining the existing vintaging for several amended PPAs. Joint CCAs’ argue that the vintaging issue has not been previously determined by the CPUC, and that the re-vintaging of these contracts, which could reduce VCE customers’ associated PCIA charges, should be addressed in ERRA compliance proceedings by the CPUC, rather than by CPUC Staff through the advice letter process.
- **Next Steps:** Reply comments are due July 5, 2021, and the PD may be heard, at the earliest, at the CPUC’s July 15, 2021, meeting. The schedule for Phase II of this proceeding has not been issued yet.
- **Additional Information:** [Proposed Decision](#) (June 10, 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

On June 15, 2021, and June 22, 2021, parties including CalCCA filed comments on a Ruling providing Energy Division’s proposal regarding the timeline for issuing Market Price Benchmark calculations used in the annual ERRA Forecast proceedings to calculate the PCIA. On June 23, 2021, CalCCA, Central Coast Community Energy Authority, East Bay Community Energy, Peninsula Clean Energy, Silicon Valley Clean Energy Authority, and City of San José jointly filed an Application for Rehearing of the Phase 2 Decision, D.21-05-030.

- **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.

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 Phase 2 Decision, D.21-05-030, addressed the recommendations of PCIA Working Group 3 and removed the cap and trigger for PCIA rate increases, authorized new Voluntary Allocation, Market Offer, and Request for Information processes for RPS contracts subject to the PCIA, and approved a process for increasing transparency of IOU RA resources. However, it did not provide unbundled customers proportional access to system and flexible RA products through the RA voluntary allocation and market offer process proposed by PCIA Working Group 3. Likewise, it declined to provide unbundled customers any access to GHG-Free energy on a permanent basis.

- **Details:** The CCA Parties' Application for Rehearing of D.21-05-030 challenges the Decision's rejection of the RA voluntary allocation and market offer and GHG-free energy allocation. It argues that D.21-05-030 violates Public Utilities Code Section 366.2(g), which guarantees CCA customers the full benefit of the resources for which they bear cost responsibility through the PCIA charge. While CCA customers pay for the RA and GHG-Free products in the PCIA portfolio, the Phase 2 Decision, provides only bundled customers preferential access to RA products and no access to GHG-Free energy on a long-term basis. The CCA Parties argue that since D.21-05-030 effectively requires unbundled customers to pay equally for benefits only bundled customers receive, the Phase 2 Decision also violates the Section 365.2 prohibition against cost-shifting among unbundled and bundled customers.

The May 20, 2021 ALJ Ruling requested comments on an attached proposal by the Energy Division regarding the timeline for issuing Market Price Benchmark calculations used in the annual ERRR Forecast proceedings to calculate the PCIA. CalCCA's comments on the Ruling recommended implementation of the Staff Proposal next year (i.e., during the IOUs' 2023 ERRR forecast cases). CalCCA also recommended that SCE and PG&E be required to file their ERRR forecast applications on May 1 each year instead of June 1. Targets Q1 2022 implementation for this year's ERRR forecast proceedings, similar to SCE's request in its 2022 ERRR forecast application.

- **Analysis:** D.21-05-030 eliminated the cap-and-trigger framework for PCIA changes. Further, it denied certain proposals from Working Group 3. Importantly, the current PCIA calculation does not fully value certain of the IOUs' portfolio attributes, but D.21-05-030 rejected the allocation of these valuable PCIA attributes to CCAs as proposed by Working Group 3. D.21-05-030 also largely allowed the IOUs to avoid any consequences for failing to optimize their above-market portfolios, including an IOU decision to simply decline all offers to buy out current above-market contracts. While D.21-05-030 failed to take on meaningful reform to the problematic ERRR forecast proceeding timelines and transparency issues, ALJ Ruling would potentially increase the timelines for parties to litigate that proceeding.
- **Next Steps:** This proceeding remains open to consider (1) Phase 2 issues relating to ERRR proceedings and (2) whether GHG-Free resources are under-valued in the PCIA methodology, and if so, the appropriate way to address this problem.

D.21-05-030 identified the following next steps:

- **August 18, 2021:** IOUs each file a Tier 2 advice letter to justify its methodology for determining how much of its PCIA-eligible Resource Adequacy is reserved as part of its Bundled Portfolio Plan.
- **August 18, 2021:** After meeting and conferring with parties to this proceeding, IOUs jointly file a Tier 2 advice letter to propose (1) a methodology for calculating potential Voluntary Allocation shares based on vintaged, annual load forecasts, and (2) a methodology for dividing their RPS portfolios into shares to be allocated.
- **September 1, 2021:** PG&E, SDG&E and SCE must host a joint workshop within 14 days of filing the advice letter to discuss the proposed methodologies
- **January 1, 2022:** PCIA cap is removed from rates.

- **January 2022:** Once the 2021 RFIs are approved, the IOUs may request approval for Contract Assignments and Contract Modifications in response to the RFI by filing Tier 3 advice letters.
- **February 2022:** After approval of the joint methodology advice letter, IOUs will inform LSEs of their potential Voluntary Allocation shares.
- **May 2022:** IOUs and LSEs complete the process of determining interest in Allocation elections.
- **June 2022:** Each IOU confirms Voluntary Allocations and propose Market Offers in their 2022 RPS Procurement Plans. LSEs request approval for Voluntary Allocations in their 2022 RPS Procurement Plans.
- **Additional Information:** CalCCA [Application for Rehearing](#) of D.21-05-030 (June 23, 2021); [D.21-05-030](#) on PCIA Cap and Portfolio Optimization (May 24, 2021); [D.21-03-051](#) granting petition to modify D.17-08-026 (March 26, 2021); [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](#).

Ensuring Summer 2021 Reliability

On June 15, 2021, the ALJ issued a Ruling directing PG&E and the California Environmental Justice Alliance (CEJA) to update their respective demand response program proposals for further consideration. On June 24, 2021, the CPUC approved D.21-06-027, modifying D.21-03-056 with respect to the day-of trigger in the emergency load reduction program (ELRP) by resolving an inconsistency in the decision.

- **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 be made available to customers on irrigation pumping tariffs.

D.21-03-056 instituted modifications to the planning reserve margin (PRM), effectively increasing the PRM beginning summer 2021 from 15% to 17.5%. For 2021, this results in a minimum target of incremental procurement 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 authorized 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. D.21-03-056 also establishes an 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.

The rehearing requests of D.21-03-056 concerned the use of fossil-fueled resources and the limits (or lack thereof) that the Decision placed on them as summer 2021 reliability resources. The CPUC's Order on rehearing found that the evidence it relied on was sufficient for indicating a need for capacity resources, that no intervenor's rights to due process were violated, and that nothing prohibits the CPUC ordering procurement of natural gas resources where it deems them necessary. The Order left certain aspects of the rehearing requests related to the use of fossil fueled back-up generation unaddressed.

- **Details:** The Ruling directs PG&E and CEJA to "refresh" their "Residential Rewards Pilot Program" and "Just Flex Rewards" proposals, respectively, through testimony served on July 7. All parties may then serve reply testimony by July 21 that responds to the CEJA Just Flex Rewards and PG&E Residential Rewards Pilot Program proposal refreshes. For reference, CEJA's Just Flex Rewards proposal would target and prioritize low-income and disadvantaged community households by allowing them to affirmatively opt-in when a Flex Alert is issued and receive a fixed \$10 payment per event for taking actions to reduce demand. PG&E's "Residential Rewards Pilot Program" would leverage existing and newly installed smart thermostats to provide 30 to 45 MW of load reduction by providing performance incentives without penalty for DR events for residential bundled and CCA participants who enroll.

D.21-06-027 modifies D.21-03-056 to clarify guidance regarding the ELRP day-of trigger. For reference, the ELRP is intended to provide the ability for the CAISO and IOUs to request load reductions during emergency conditions of high grid stress. . D.21-06-027 clarifies that the ELRP will have both day-of and day-ahead triggers for Group A participants (certain non-residential customers and aggregators that do not participate in DR programs), without an option for participants to opt-out of the day-of trigger. The IOUs are directed to file a joint supplemental Tier 1 AL implementing the change within 15 days of the adoption of a Decision.

- **Analysis:** D.21-06-027 resolves an inconsistency in D.21-03-056 by directing the inclusion of a day-of trigger for Group A participants in the ELRP. D.21-03-056 did not address VCE's proposed Agricultural AutoDR Demand Flexibility Pilot, and the June 10, 2021, Ruling has limited additional testimony and consideration, at least for now, to a discussion of proposals made by PG&E and CEJA.
- **Next Steps:** PG&E and CEJA testimony refreshing their proposals are due July 7, 2021. All parties may then serve reply testimony by July 21 that responds to the CEJA Just Flex Rewards and PG&E Residential Rewards Pilot Program proposal refreshes.
- **Additional Information:** [D.21-06-027](#) (approved June 24, 2021); [Order](#) denying applications for rehearing (May 20, 2021); [D.21-03-056](#) (March 25, 2021); [D.21-02-028](#) directing IOUs to seek additional capacity for summer 2021 (February 17, 2021); [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](#).

PG&E's Phase 2 GRC

Parties filed reply briefs on June 10, 2021. The ALJ issued a Ruling on June 16, 2021, directing PG&E to provide an exhibit containing illustrative rates and bill impacts resulting from several specified marginal cost scenarios.

- **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.

- **Details:** Five settlement agreements are pending. The **Revenue Allocation Supplemental Settlement Agreement** resolves all of the inter-class revenue allocation issues. Regarding bundled PCIA allocation, the parties agreed to remove PCIA at present rates before allocation and reallocate to the classes in proportion to the adopted generation allocation. The settling parties also agreed to keep in Distribution the revenues for DR programs and EV programs. The settling parties agreed to move Energy Efficiency Incentives revenues from Distribution to Public Purpose Programs and allocate them by the Equal Percentage of Total Revenue method.

The **Agricultural Rate Design Supplemental Settlement Agreement** resolves the agricultural rate design issues in this proceeding, except for the issue of a proposed bill credit for PSPS events. The settling parties agreed to the rate designs proposed by PG&E in its opening testimony, for default Schedules AG-A1, AG-A2, AG-B, and AG-C and opt-in Schedules AG-FA, AG-FB, and AG-FC, as well as the demand charge rate limiter for Schedule AG-C, the elimination of the monthly TOU meter charge, maintaining the status quo for the Optimal Billing Period Program, and Peak Day Pricing provisions. Additionally, settling parties agreed to create new optional rate Schedules AG-A3 and AG-B2 that reduce the summer off-peak energy charges below the electric bundled system average rate. The settling parties agreed that the following four issues should not be decided in this case: A new 10-year legacy TOU period, a springtime rate or balancing account adjustment, daily demand charges, and an account or demand aggregation program.

In the **Economic Development Rate (EDR) Supplemental Settlement Agreement** settling parties reached a settlement agreement to continue the EDR program with program-related rate reductions. PG&E's EDR rate reduces both the transmission, distribution, and the generation portions of customer bills. The settlement would provide that the EDR discount should be set in a way that enables CCAs to offer comparable rates, and PG&E and Joint CCAs agreed to a collaborative process to identify and vet EDR applicants that will make it easier for CCAs to provide a generation rate reduction to CCA customers who qualify for PG&E's EDR. The rate reductions for EDR will be separated between generation and distribution amounts, with the deduction to the generation portion specified in the settlement agreement being substantially less than under the current allocation.

The **Commercial and Industrial Rate Design Supplemental Agreement** resolves Commercial and Industrial rate design issues, apart from the issue of CPUC action on the design of PG&E's transmission rates. The settling parties agreed that PG&E should set bundled PCIA initially equal to the most recent vintage PCIA, but use the adopted allocation for generation to set going forward PCIA rates. PG&E would set SOP rates to recover at least the PCIA. The tariff presentation of the PCIA for bundled generation rates would be modified as set forth in PG&E's rebuttal testimony, which proposed alternative tariff language in response to Joint CCAs' proposals.

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.
- **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:** PG&E was directed to provide an exhibit containing illustrative rates and bill impacts resulting from several specified marginal cost scenarios by July 16, 2021. A CPUC decision on non-RTP issues is anticipated for October 2021. Rebuttal testimony on RTP issues is due July 30, 2021, followed by an evidentiary hearing September 20-23, 2021, and a decision on RTP issues in May 2022.
 - **Additional Information:** [Ruling](#) directing PG&E to provide marginal cost scenarios (June 16, 2021); [Motion](#) to adopt Commercial and Industrial Rate Design Supplemental Agreement (April 13, 2021); [Motion](#) to adopt Revenue Allocation Supplemental Settlement Agreement (April 8, 2021); [Motion](#) to adopt Agricultural Rate Design Supplemental Settlement Agreement (April 8, 2021); [Motion](#) to adopt Economic Development Rate (EDR) Supplemental Settlement Agreement (April 8, 2021); [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](#).

Provider of Last Resort Rulemaking

A prehearing conference was held June 11, 2021.

- **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”). 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.

- **Details:** CalCCA’s April 2021 comments on the OIR provided the following recommendations:
 - The POLR should provide service for a short duration (three – six months) from short term procurement with costs allocated to those that receive POLR service.
 - Existing structures (e.g., Financial Security Requirements, Transitional Bundled Service, System RA Waiver for the POLR in limited circumstances, etc.) can be used directly while others can be expanded or adjusted for the purpose of addressing POLR needs (e.g., Load Transfer and CCA implementation time frames and processes).
 - CPUC should examine ways in which retail providers could voluntarily take on customer service from defaulting LSEs in a “next to last provider” arrangement which could obviate or reduce the need for a POLR.
 - CPUC should ensure that rules regarding procurement are imposed equitably on all LSEs such that the requirements are stable and transparent in a manner that LSEs can procure as necessary to comply with requirements while providing reliable, affordable, and environmentally sound resources in a manner that minimizes the risk of LSE default.
- **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:** TBD.
- **Additional Information:** [Ruling](#) scheduling prehearing conference (April 30, 2021); [Order Instituting Rulemaking](#) (March 25, 2021); Docket No. [R.21-03-011](#).

2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking

On June 8, 2021, the Assigned Commissioner issued a Scoping Memo and Ruling.

- **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 will be established in this proceeding.
- **Details:** The Scoping Memo and Ruling identified the only issue in this proceeding as determining the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amounts.
- **Analysis:** VCE customers will pay the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amounts established in this proceeding.

- **Next Steps:** The procedural schedule shows no activities until September 2021. In September, the Department of Water Resources will transmit a notice to CPUC identifying the proposed NBC amount for 2022, and CPUC will issue a Ruling seeking comments. A proposed decision will be issued in November, followed by a Decision in December. The same timeline will also apply in 2022 to establish the 2023 Wildfire Fund NBC amount.
- **Additional Information:** [Scoping Memo and Ruling](#) (June 8, 2021); [Order Instituting Rulemaking](#) (March 10, 2021); Docket No. [R.21-03-001](#).

PG&E 2020 ERRA Compliance

On June 21, 2021, the Assigned Commissioner issued a Scoping Memo and Ruling.

- **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.

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.

- **Details:** The Scoping Memo and Ruling specifies the proceeding will be divided into two phases. Phase 1 will address whether PG&E (1) prudently administered and managed Utility-Owned Generation facilities and QF and non-QF contracts, (2) achieved least-cost dispatch of energy resources, (3) had reasonable, accurate, and appropriate ERRA and PABA entries, and (4) administered RA procurement and sales consistent with its Bundled Procurement Plan, among other issues.

Phase 2 issues may be amended based on the outcome of Phase 2 of PG&E’s 2019 ERRA compliance proceeding. The tentative list of issues include whether sales forecasting methods for adjusting revenue requirement under current decoupling policy should be adjusted to account for power not sold or purchased during a Public Safety Power Shutoff (PSPS) event in 2020, whether it is appropriate for PG&E to return the revenue requirement equal to the estimated unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2020, and the appropriate methodology for calculating PG&E’s unrealized volumetric sales and unrealized revenues resulting from 2020 PSPS events.

- **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 and 2023.

- **Next Steps:** Intervenor testimony is due July 12, 2021, rebuttal testimony is due August 13, 2021, evidentiary hearings are scheduled for September 13-17, 2021, opening briefs are due October 19, 2021, reply briefs are due November 9, 2021, and a PD is anticipated for Q1 2022.
- **Additional Information:** [Scoping Memo and Ruling](#) (June 21, 2021); [Application](#) (March 1, 2021); Docket No. [A.21-03-008](#).

PG&E Regionalization Plan

No updates this month. The ALJ held a status conference on May 18, 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 2020, 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 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:** TBD.
- **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](#).

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 April 15, 2021, the CPUC issued Resolution M-4852, placing PG&E into Step 1 of the Enhanced Oversight and Enforcement process it established when approving PG&E’s bankruptcy plan of reorganization.

- **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:** Resolution M-4852 placed PG&E into the first of six steps of the 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. Resolution M-4852 found that PG&E made insufficient progress toward approved safety or risk-driven investments and is not sufficiently prioritizing its Enhanced Vegetation Management (EVM) based on risk. It found that PG&E is not doing the majority of EVM work – or even a significant portion of work – on the highest risk lines.
- **Analysis:** PG&E must adhere to its Corrective Action Plan or the CPUC could move it into an additional step of the Enhanced Oversight and Enforcement process.
- **Next Steps:** The proceeding remains open, but there is no procedural schedule at this time.
- **Additional Information:** [Resolution M-4852 \(April 15, 2021\)](#); [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: July 8, 2021

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of June 30, 2021.

Item 9 - Enrollment Update

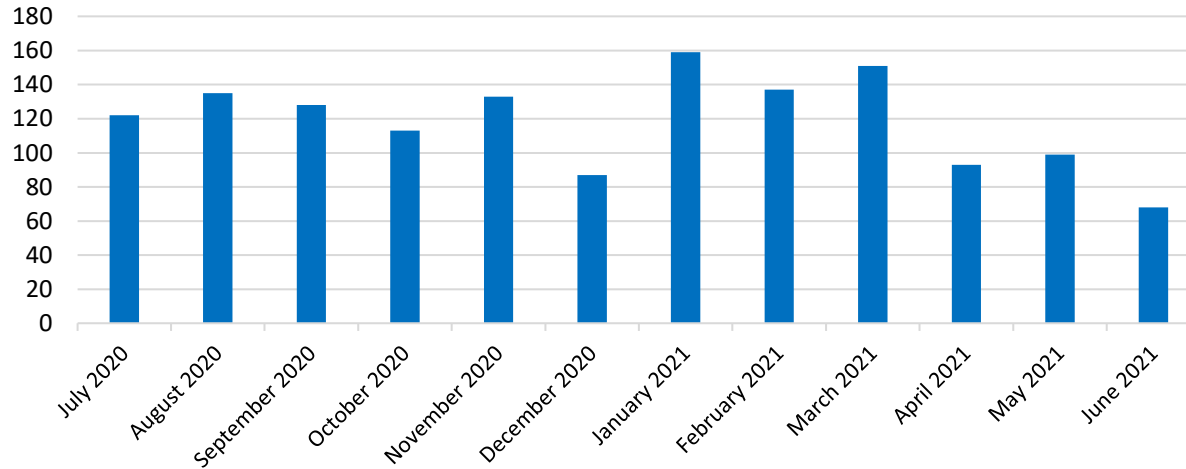
	Davis	Woodland	Winters	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	27,701	20,737	2,387	10,812	61,637	53,535	6,082	7	1,923	10,179	51,458
Eligible customers	29,025	23,727	2,603	12,325	67,680	58,715	6,678	7	2,176	11,108	56,572
Participation Rate	95%	87%	92%	88%	91%	91%	91%	100%	88%	92%	91%

There are currently 299 Winters customers not included in this table. NEM will enroll throughout 2021.

% of Load Opted Out

Residential	Commercial	Industrial	Ag	Total
10%	9%	0%	12%	9%

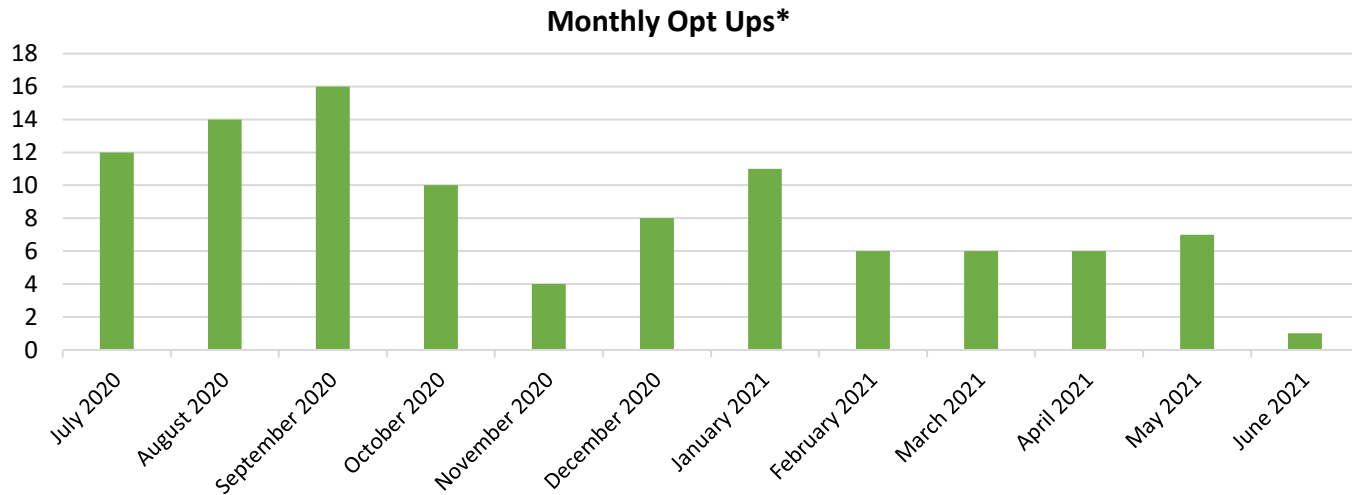
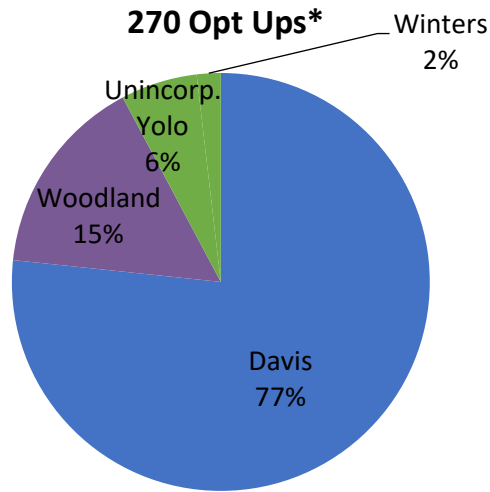
Monthly Opt Outs



Status Date: 6/30/21



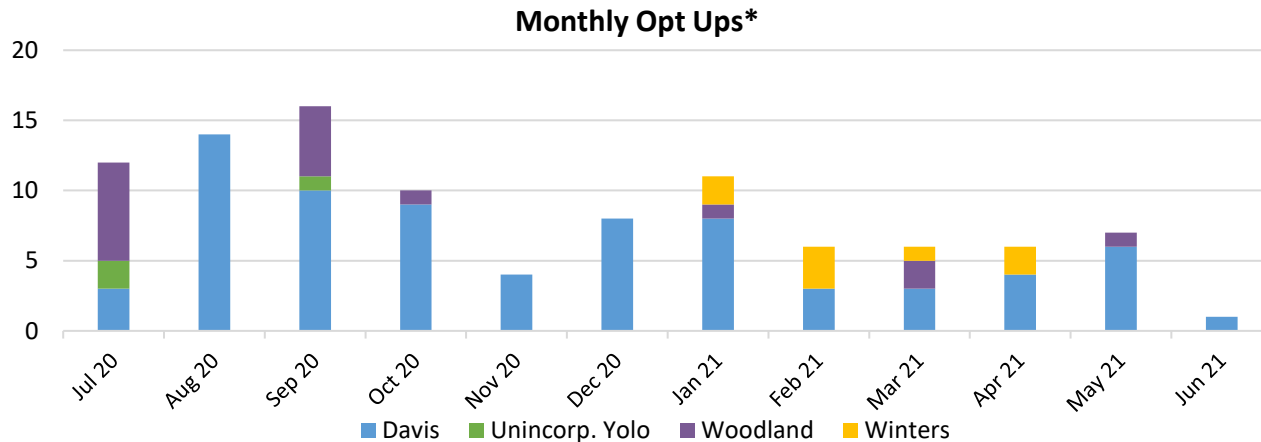
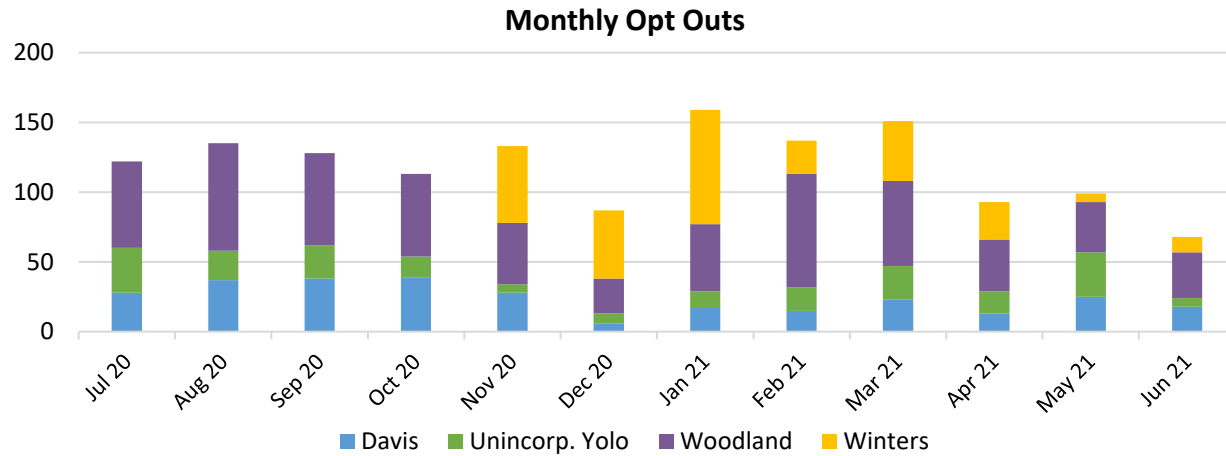
Item 9 - Enrollment Update



* 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.



Item 9 - Enrollment Update

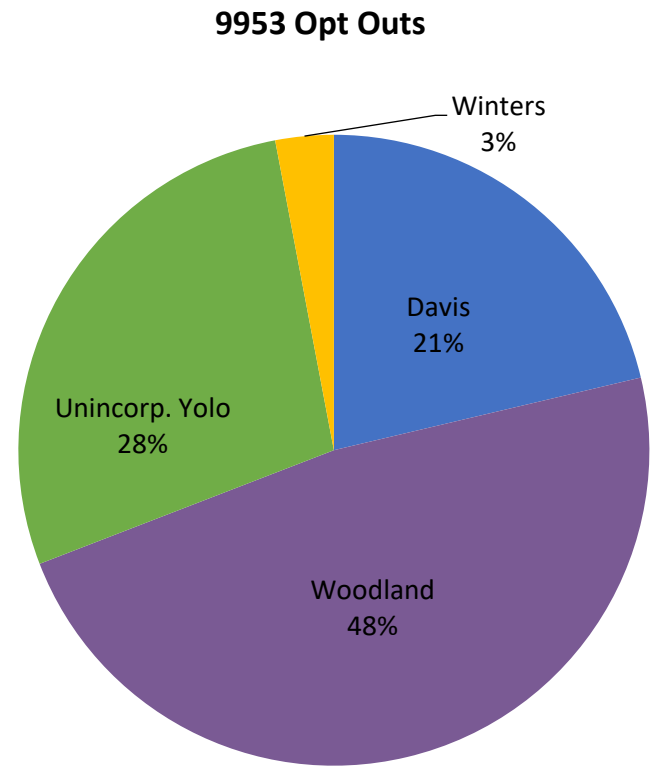
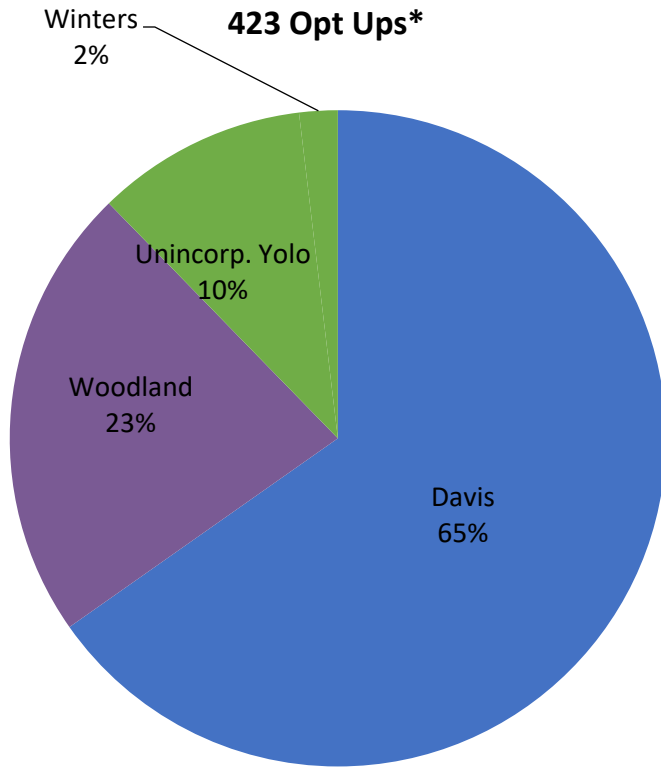


* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

Status Date: 6/30/21



Item 9 - Enrollment Update



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

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee June 24, 2021 Meeting Summary

DATE: July 8, 2021

This report summarizes the Community Advisory Committee’s meeting held via Zoom webinar on Thursday, June 24, 2021 at 5 p.m.

- A. Renewable Technology (front of the meter) discussion. (Informational / Discussion):** In preparation for further discussions and input from the CAC on VCE’s goal of carbon neutrality and portfolio study, CAC Members received information on primary renewable technology front of the meter (FOM) utility scale resources. The CAC asked questions and discussed pros, cons, and usage of photovoltaic (PV), PV paired with battery energy storage system (BESS), wind, geothermal, biomass, and energy storage.

Some key comments from CAC members included:

- Wind: Siting should address environmental concerns
- Geothermal: Attractive but limited availability
- Biomass/bioenergy: Covers a wide range of technologies. Projects need to clearly state which technology and which sources are being used so know the pros and cons. Local opportunities.
- Energy storage: Helps with need for resilience. Similar to biomass, lots of technologies and not all are the same.
- Important to include resiliency and net benefit when evaluating projects.

- B. Update on Net Energy Metering (NEM) 3.0 Proceeding:** Staff provided a definition and brief history of NEM and the transition from NEM 1.0 and 2.0 to 3.0. Staff informed those present that currently NEM 3.0 is being discussed at the California Public Utilities Commission (CPUC) with an anticipated decision from the CPUC by the end of 2021, and implementation of NEM 3.0 by early 2022. Staff provided key issues that are to be considered by the CPUC, potential cost shift from NEM to non-NEM customers, compensation for surplus generation, equitable access to low-income customers, how to avoid grid costs from NEM customers, GHG emissions reductions, contribution to renewable portfolio standard (RPS) goals and T&D efficiencies. It was suggested that VCE adopt a policy on NEM Customers with the above considerations in mind. Staff are to look at other CCA’s policies towards their NEM customer base. Lastly, another consideration is the role of roof top solar in reaching VCE’s goals and its effect on load and storage.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Receipt of signed Amendment 2 to Jim Parks Agreement for Consultant Services increasing the not to exceed amount

Date: July 8, 2021

RECOMMENDATION

Receive copy of signed Amendment 2 to Jim Parks Agreement for Consultant Services increasing the not to exceed amount by \$8,000 for a new not to exceed amount of \$18,000.

BACKGROUND

On June 29, 2020, VCE entered into an agreement for consultant services with James Parks to provide transitional director duties, including SACOG grant and other program activities, with the new Director of Customer Care and Marketing Rebecca Boyles. The agreement is for a not to exceed amount of \$10,000 and was set to expire on December 31, 2020.

Amendment 1 to the consultant agreement was signed expanding the tasks to include key account services and extending the contract through December 31, 2021.

Through May 2021, \$8,200 has been expended leaving \$1,800 remaining. Since the contract expires in December 2021, Amendment 2 to the agreement was signed to increase the not to exceed amount by \$8,000 for a new not to exceed amount of \$18,000 (Exhibit D – Payment).

Attachments

1. Amendment 2 to the Jim Parks Agreement for Consultant Services
2. Exhibit D – Payment

AMENDMENT NO. TWO (2)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
JIM PARKS

1. Parties and Date.

This Amendment No. Two (2) to the Consultant Services Agreement dated June 29, 2020 is made and entered into by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California with its principal place of business at 604 2nd Street, Davis, California 95616 (“VCE”) and Jim Parks, with its principal place of business at 4478 G Street, Sacramento, California 95819. VCE and Jim Parks are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Jim Parks. VCE and Jim Parks entered into an agreement entitled “Agreement for Consultant Services” dated June 29, 2020 (“Agreement”) for the purpose of retaining Jim Parks to provide the services described in the Agreement; extended this Agreement through December 31, 2021 (Exhibit C) and amended the scope of services (Exhibit A), by Amendment No. 1.

2.2 Amendment Purpose. VCE and Jim Parks desire to amend the Agreement to increase the not to exceed amount by \$8,000 (Exhibit D – Payment), with no change to the expiration date of December 31, 2021 or to the revised scope of services as outlined in Amendment One (1).

2.3 Amendment Authority. This Amendment No. Two (2) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

3.1 Amendment. Section 4.1 Compensation of the Agreement is hereby amended in its entirety to read as follows:

4.1 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**. Notwithstanding the

provisions of Exhibit D, Amendment Two (2) will add Eight Thousand Dollars (\$8,000) to the original Ten Thousand (\$10,000) total compensation, for a new not to exceed amount of Eighteen Thousand Dollars (\$18,000) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. Two (2), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. Two (2). From and after the date of this Amendment No. Two (2), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Two (2).

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. Two (2).

3.5 Severability. If any portion of this Amendment No. Two (2) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.


[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. TWO (2)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND JIM PARKS**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. TWO (2) as of the 29th day of June 2021.

VALLEY CLEAN ENERGY ALLIANCE

JIM PARKS

By: 

Mitch Sears
Interim General Manager

By: 

Its: Sole Proprietor

Printed Name: James Parks

EXHIBIT D

PAYMENT

The Scope of Work shall be performed on an individual task, consulting time, travel time, materials, and actual direct expense basis with work assigned as needed.

Designated Employees and Rates:

Professional/Title	Hourly Consulting Rate
James Parks	\$100.00 per hour

Other Applicable Reimbursement Rates:

Particulars	Rate
Air Travel Time	\$50.00 / hour
Auto Travel Time (one hour or more)	\$50.00 / hour
Auto Mileage Rate (or current IRS reimbursement rate)	\$0.58 / mile
Actual Direct Expenses (Receipts required above \$25.00)	Actual Expense
Phone/postage/printing/office materials	No Charge

Amendment Two (2) to the agreement will add \$8,000 to the \$10,000 (original agreement amount) for a new "Total Not to Exceed Amount" of: \$18,000.00 unless amended by written agreement of both parties.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

To: Board of Directors

From: Mitch Sears, Interim General Manager
Rebecca Boyles, Director of Customer Care and Marketing

Subject: Amendment 24 (Call Center Hours) to Task Order 2 of the SMUD Professional Services Agreement

Date: July 8, 2021

RECOMMENDATION

Ratify via resolution approval of Amendment 24 to Task Order 2 of the Sacramento Municipal Utilities District (SMUD) Professional Service Agreement authorizing the reduction in Call Center hours.

BACKGROUND

On October 12, 2017 the VCE Board approved a Professional Services Agreement with the Sacramento Municipal Utility District (SMUD) and Task Orders 1 and 2 to provide program launch and operational services. Soon thereafter, a series of additional Task Orders were implemented to the Agreement, including Task Order 3 to provide Wholesale Energy Services; Task Order 4 to provide Operational Staff Services to VCE; and Task Orders 5 (Long Term Renewable Procurement Services) and 6 (Expansion of VCE Service to Winters, CA).

Because of low call volume (less than 9%) between the hours of 7am-9am and 5pm and 7pm, staff requested a change in contact center hours starting July 1, 2021. Customers will be able to reach a customer service representative directly through phone or chat from 9am-5pm (changed from 7am-7pm). After business hours, customers may self-serve on a variety of options including opting up or opting out through the website, the phone Interactive Voice Response system, or leave a message. The customer care team normally returns customer calls the next business day. The change will result in a modest savings for VCE. If staff encounters negative feedback from the change, the change in hours will be re-evaluated.

Financial Impact: The cost reduction associated with the hours change results in a savings of about \$14,000-\$15,000 per year.

CONCLUSION

Staff is requesting the VCE Board to ratify via resolution Amendment 24 to Task Order 2 (Data Management and Customer Call Center Services).

Attachments:

1. Signed Amendment 24 to Task Order 2 (Data Management and Customer Call Center Services)
2. Resolution ratifying approval of Amendment 24 (Call Center hours) to Task Order 2 to the VCE-SMUD Professional Services Agreement

AMENDMENT 24 TO EXHIBIT A: Scope of Services**A.4 Task Order 2 – Data Management and Customer Call Center Services**

SMUD and VCEA agree to the following services, terms, and conditions described in this Amendment 24 to Exhibit A, Task Order No. 2 (Amendment 24), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Amendment 24 conflict with any general provisions in the Agreement or Task Order 2, the provisions of this Amendment 24, shall take precedence. Capitalized terms used in this Amendment which are not defined in this Amendment will have the respective meanings ascribed to them in the Agreement or a previous Amendment thereof.

The Effective Date of this Amendment 24 is the date of last signature below.

- 1. Section 1, SCOPE OF WORK, is amended to replace Section 1.3.4. with the sections below:**

“1.3.4. Call Center Staffing hours of Operation”**1.3.4. Scope of Work**

Provide sufficient Customer Call Center staff during the non-enrollment period to process Program service enrollment and answer questions related to Program services, generation-related billing and other Program-related inquiries via phone or email. SMUD will provide "Silver" service level as defined below.

1.3.4.1. Call Center Staff will be available between the hours of 9:00AM to 5:00PM Pacific Standard Time, Monday through Friday, excluding VCEA and PG&E holidays. The Parties may mutually agree to modify call center staffing hours based on an assessment of hourly call volumes.

1.3.4.3. Data manager experts will be available to manage escalated calls between the hours of 9:00AM to 5:00PM Pacific Standard Time, Monday through Friday, excluding VCEA and PG&E holidays.

1.3.4.4. Bi-lingual staff will be available to help Spanish-speaking customers. SMUD will provide staff, and a third-party contractor (a subcontractor to this Agreement), to support translation services on an as-needed basis. The translation services will include Spanish, as well as many other different languages, and will be available during SMUD business hours of 9:00 A.M to 5:00 P.M. Pacific Standard Time, Monday through Friday (excluding holidays). 100% of voicemail messages answered within one (1) business day.

1.11.2 Deliverables and Due Dates

The schedule for the implementation of reduced call center hours will be based on VCEA Board approval tentatively scheduled on July 1, 2021.

	Milestone	Responsible Party	Due Date
1	Task Order Amendment executed	VCE	June 30, 2021
2	Configuration complete	SMUD	July 1, 2021
3	Go-live date	SMUD	July 1, 2021

1.11.3 Schedule

It is estimated that the Scope of Services in this task will be completed in one (1) day from the Amendment execution due date of this Amendment 24, and SMUD will implement the technical solution by July 1, 2021.”

Section 4, COMPENSATION FOR SERVICES is amended to add Section 4.1

“Effective (the implementation date), there will be a monthly \$.02 cost deduction per customer.”

Section 5, PAYMENT TERMS, is amended to add the following:

“Beginning on (the implementation date), SMUD will provide monthly invoices with the \$.02 cost deduction per customer fixed fee for the implementation of reduced call center hours (9am-5pm Monday-Friday Pacific Standard Time), and payment will be due net thirty (30) days from date of the invoice.”

[Signature Page follows]

SIGNATURES

The Parties have executed this Amendment 24, and it is effective as of the date of last signature below.

Valley Clean Energy Alliance

By:  _____

Name: Mitch Sears

Title: Interim General Manager

Date: June 28, 2021

Approved as to Form: N/A

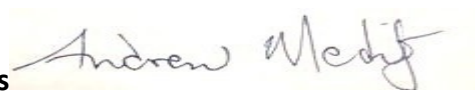
Sacramento Municipal Utility District

By:  _____

Name: Brandy Bolden

Title: Chief Customer Officer

Date: June 28, 2021

Approved as to Form: 

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021 - ____

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE RATIFYING THE INTERIM
GENERAL MANAGER'S APPROVAL AND EXECUTION OF AMENDMENT 24 TO TASK
ORDER 2 (CALL CENTER HOURS) TO THE SACRAMENTO MUNICIPAL UTILITIES DISTRICT
PROFESSIONAL SERVICES AGREEMENT**

WHEREAS, on August 31, 2017, the VCE Board considered a proposal by the Sacramento Municipal Utilities District ("SMUD") to provide program launch and operational services and subsequently directed VCE staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board;

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCE to provide Community Choice Aggregate (CCA) support services;

WHEREAS, On October 12, 2017 the VCE Board approved the Master Professional Services Agreement and Task Order 1 (technical and analytical services) and Task Order 2 (Data Management and Call Center Services) to provide program launch and operational services consistent with the SMUD proposal and VCE Board direction;

WHEREAS, in October 2018, Amendment 4 to Task Order 2 updating VCE's base program from "LightGreen" to "Standard Green" was approved;

WHEREAS, in April 2019, Amendment 10 to Task Order 2 adding detail to SMUD's invoicing methodologies in the Compensation for Services section updating was approved;

WHEREAS, in June 2019, Amendments 11 and 12 to Task Order 2 implementing the Annual Dividend program and second Net Energy Metering (NEM) True-Up Policy was approved;

WHEREAS, in August 2019, Amendment 13 to Task Order 2 updating data management and customer call center service rate was approved;

WHEREAS, in May 2020, Amendment 16 to Task Order 2 authorizing the configuration of VCE's billing system to enable vintage year specific rates was approved;

WHEREAS, in July 2020, the Board received a signed copy by VCE's Interim General Manager of Amendment 18 to Task Orders 2, 3 and 4 increasing the billable hourly rates by 2.0% effective July 1, 2020;

WHEREAS, in October 2020, the Board approved Amendment 20 to Task Order authorizing SMUD to implement the 2019 California Energy Commission Power Content Label email scope of work;

WHEREAS, on May 13, 2021 the Board ratified signed Amendment 23 to Task Order 2 which implemented an outbound call campaign to customers in billing arrears;

WHEREAS, on June 10, 2021 the Board ratified Amendment 22 to Task Order 2 which implemented a way for Net Energy Metering customers to donate their credit online.

WHEREAS, after implementing the online customer service assistant option and assessing hourly call volumes, the Call Center hours can be reduced for Staff to be available between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding VCE and PG&E holidays at a monthly \$.02 cost deduction per customer.

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

1. ratify the Interim General Manager's approval and execution of Amendment 24 to Task Order 2 (Data Management and Call Center Services) reducing the Call Center hours.

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

EXHIBIT A: Amendment 24 to Master Professional Services Agreement Task Order 2

EXHIBIT A

AMENDMENT 24 TO TASK ORDER 2 (DATA MANAGEMENT AND CALL CENTER SERVICES)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

To: Board of Directors

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

Subject: Extension of Credit Agreement with River City Bank

Date: July 8, 2021

RECOMMENDATION

Authorize the Interim General Manager to conduct any final negotiations and sign all necessary documents on behalf of VCE for the short term extension of the Amended and Restated Credit Agreement (RLOC Agreement) and Term Note from River City Bank (RCB) approved on September 10, 2020.

BACKGROUND AND ANALYSIS

At the December 14, 2017 Board meeting, the Board adopted a resolution to select RCB as the credit and banking services vendor for VCE and authorized the Interim General Manager to execute a letter of intent and enter into negotiations for final contracts with RCB for VCE credit facilities. On March 7, 2018, the Interim General Manager executed a term sheet for up to \$11,000,000 in total credit facilities for VCE with RCB.

At the May 10, 2018 Board meeting, the Board approved the Credit Agreement with RCB and authorized the Board Chair to approve and execute the Credit Agreement. The availability of the RLOC was set to expire 1 year from execution of agreement (May 15, 2019) and received a series of extensions.

At the September 10, 2020 Board meeting, the Board adopted Resolution 2020-026 that approved the Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB). The Resolution authorized the Interim General Manager to conduct any final negotiations and sign all necessary related documents resulting in the execution of Attachment 1.

The current RLOC Agreement has a limit of \$5,000,000 available for cash advances and an additional \$2,000,000 available for Letters of Credit, for a total RLOC of \$7,000,000. Since August of 2018, VCE has not drawn on the RLOC and currently has a \$0 balance. Except the extension of the RLOC, no other material changes are proposed; if material changes are proposed, Staff will return for Board direction.

As part of receiving the RLOC renewal described above, the Term Loan Note was modified to mature on September 1, 2021 (Attachment 2 - Modification of Term Note). Though this was significantly earlier than the original 5-year term. On September 1, 2021 a final payment of approximately \$1.28 million is due to pay off the Term Loan. Note: RCB has communicated that there is a high probability the payment due date could be extended

Staff believes that with the continued uncertainty related to the PCIA fee, resource adequacy costs, and PG&E rates for 2021 and 2022, the extension of the RLOC and Term Loan Amoritization is mutually beneficial for RCB and VCE to allow time for additional clarity regarding these factors (e.g. 2022 PG&E rates will be implemented in January).

CONCLUSION

Staff recommends the Board adopt a resolution that authorizes the Interim General Manager to conduct any final negotiations and sign all necessary documents on behalf of VCE to extend the Amended and Restated Credit Agreement (RLOC Agreement) and Modification of Term Note from River City Bank (RCB).

Attachments

1. Amended and Restated Credit Agreement September 2020
2. Modification to Term Note September 2020
3. Resolution authorizing the Interim General Manager to extend Credit Agreement and Modification to Term Note

AMENDED AND RESTATED

CREDIT AGREEMENT

Dated as of September 15, 2020

by and between

**VALLEY CLEAN ENERGY ALLIANCE,
as Borrower**

and

**RIVER CITY BANK,
as Lender**

AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this "*Agreement*") is entered into as of September 15, 2020, by and between **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), and **RIVER CITY BANK**, a California corporation ("*Lender*").

W I T N E S S E T H:

WHEREAS, Borrower and Lender have entered into that certain Credit Agreement (the "*Original Credit Agreement*") dated as of May 16, 2018, pursuant to which Lender agreed to make available to Borrower a revolving credit facility;

WHEREAS, Borrower and Lender desire to amend, restate and replace the Original Credit Agreement, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION.

Section 1.1. Definitions. All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them in **Exhibit A**.

Section 1.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term "including" is not limiting and means "including without limitation."

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and

including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

Section 1.3. Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

SECTION 2. THE REVOLVING LINE OF CREDIT.

Section 2.1. Revolving Credit. Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the sole purpose of (a) providing working capital (each a “*Cash Advance*”) in an aggregate principal amount not to exceed, at any one time, \$5,000,000.00 (the “*Cash Advance Sublimit*”) and (b) supporting the issuance of Letters of Credit (each a “*Letter of Credit Advance*”) in accordance with Section 4. The Revolving Credit will be disbursed in one or more advances (each, an “*Advance*”), provided that all outstanding Advances shall not exceed in the aggregate, at any one time, the Revolving Credit Commitment, and provided further that the conditions precedent to Advances specified in Section 9 are satisfied. Subject to the Cash Advance Sublimit, the Revolving Credit Commitment and the other terms and conditions of this

Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

Section 2.2. Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

Section 2.3. Revolving Note. The Revolving Credit is evidenced by an Amended and Restated Revolving Credit Promissory Note (the "*Revolving Note*") made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as **Exhibit C** (a "*Letter of Credit Note*") in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining Availability and the non-utilization fee described in Section 5.1(c). However, each Letter of Credit Note will evidence Borrower's obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the "*Unreimbursed Amount*") of any drawing actually paid by Lender under a Letter of Credit, in accordance with Section 4.3. All references to "Advances" in Sections 2.4, 3.1 and 3.2 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

Section 2.4. Repayment.

(a) *Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Notes. Except for the Term Loan, any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

Section 3.1. Interest Payments.

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full, as provided herein and in the Revolving Note. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date. Interest on Advances will be payable monthly in arrears on each Payment Date. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates. All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

Section 3.3. Prepayments.

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. If for any reason at any time the aggregate total outstanding amount of Advances exceeds the Revolving Credit Commitment, then Borrower shall, without notice, prepay Advances (together with all accrued but unpaid interest thereon) in an amount equal to such excess.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

Section 3.4. Place and Application of Payments and Collections. All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank
Loan Center
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any

manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

Section 3.5. Notations. All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

SECTION 4. LETTERS OF CREDIT.

Section 4.1. Letter of Credit Commitment.

(a) Subject to the terms and conditions of this Agreement, Lender agrees (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by cash collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit does not provide Lender with the opportunity to decline to renew the Letter of Credit at least annually, or requires Lender to provide a notice of non-renewal, if any, earlier than sixty (60) days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin Lender from issuing such Letter of Credit, or any law applicable to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate outstanding amount of all Advances to exceed the Revolving Credit Commitment at the time of issuance.

Section 4.2. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than ten (10) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

Section 4.3. Drawings and Reimbursements of Letters of Credit. Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "*Reimbursement Date*") that is three (3) Business Days after any payment by Lender under a Letter of Credit (each such date, an "*Honor Date*"), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower's failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

Section 4.4. Unexpired Letters of Credit. Borrower agrees that, if any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date, then Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit.

Section 4.5. Obligations Absolute.

(a) The obligation of Borrower to reimburse Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by Lender of any requirement that exists for Lender's protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;

(v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the International Standby Practices (“ISP”) or the Uniform Customs and Practice for Documentary Credits (“UCP”), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower’s instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

Section 4.6. Role of Lender as L/C Issuer. Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender’s willful misconduct or gross negligence or Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring

or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunications ("*SWIFT*") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

Section 4.7. Applicability of ISP, Limitation of Liability. Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender's rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Section 4.8. Letter of Credit Fees. Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the ("*Issuance Fee*") or Four Hundred and 00/100 Dollars (\$400.00) (the "*Flat Fee*"), (ii) a documentation fee in connection with the issuance or amendment of any Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars (\$250.00), and (iii) reasonable and customary fees upon the occurrence of any other activity with respect to any Letter of Credit (including without limitation, the transfer or cancellation of any Letter of Credit). The fee for any increase to a Letter of Credit shall be an amount equal to the greater of the Issuance Fee (based on the amount of the increase and remaining period) or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Letters of Credit issued by Lender's correspondent banks. All Letter of Credit Fees will be due and payable in full upon request by Lender. Borrower acknowledges and agrees that (i) the fees listed above are Lender's current fees, (ii) Lender may change such fees from time to time upon notice to Borrower, and (iii) Borrower will pay such fees as changed by Lender from time to time

Section 4.9. Billing and Payment of the Issuance Fee. The Issuance Fee will be calculated by Lender and due and payable upon issuance of each Letter of Credit. Lender will calculate the Issuance Fee as 2.00% of the face amount of the Letter of Credit divided by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee.

SECTION 5. FEES.

Section 5.1. Borrower shall pay to Lender fees in connection with the Revolving Credit as follows:

(a) Loan Fee. A Loan Fee in an amount equal to 0.20% of the Revolving Credit Commitment (\$14,000.00).

(b) Documentation Fee. A Documentation Fee in the amount of \$500.00.

(c) Non-Utilization Fee. Borrower agrees to pay to Lender an annual non-utilization fee in an amount equal to 0.10% of the Average Daily Unused Amount of the Revolving Credit Commitment. "*Average Daily Unused Amount*" means the sum of each calendar day's Availability during the applicable period, divided by the number of calendar days within the period. "*Availability*" means the difference between \$7,000,000.00 and the sum of all outstanding Advances at the close of business each day. The non-utilization fee for the period from the date of this Agreement to the Revolving Credit Termination Date shall be due and payable by no later than thirty (30) days after the Revolving Credit Termination Date. Notwithstanding the foregoing, upon the termination of the Revolving Credit Commitment (a) at the request of Borrower or (b) following the occurrence of any Event of Default, the non-utilization fee for the period from the date of this Agreement to the date of termination shall be due and payable immediately.

(d) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other costs and expenses incurred by Lender associated with the underwriting, documentation and administration of this Agreement, including any reasonable fees and expenses of legal counsel retained by Lender.

SECTION 6. [Intentionally omitted.]

SECTION 7. COLLATERAL.

Section 7.1. Debt Service Reserve Account. As a condition to Lender's obligation to make any Advances under the Revolving Credit, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the "*Debt Service Reserve Account*"), with a balance of not less than \$1,100,000.00 at all times. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

Section 7.2. Pledge and Security. As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in all Accounts, Revenues, Resource Adequacy Contracts, and the Debt Service Reserve Account, and (i) all replacements, substitutions or proceeds of the foregoing, (ii) all instruments and documents now or hereafter evidencing the of the foregoing, (iii) all powers, options, rights, privileges and immunities relating to the foregoing, and (iv) all interest, income, profits and proceeds of the foregoing. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys' fees, costs and expenses incurred by Lender

in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under the Assignment of Deposit Account shall be cumulative.

Section 7.3. Restrictions on Debt Service Reserve Account. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$1,100,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal.

Section 7.4. General Obligation. Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby acknowledges and agrees that payment of all Obligations (including, without limiting the foregoing, payments of principal of and interest on each Advance) is a general obligation of Borrower secured by a first priority lien on the collateral described in this Agreement. Lender acknowledges that the Obligations of Borrower hereunder are solely obligations of Borrower and are not debts, liabilities or obligations of any of the JPA Members and no taxing power of any of the foregoing is pledged therefore. Borrower has no taxing powers.

Section 7.5. Lockbox Accounts. Notwithstanding anything to the contrary in this Section 7 or elsewhere in this Agreement, Lender acknowledges that Borrower has established a lockbox "revenue" account and lockbox "reserve" account with Lender (collectively, the "Lockbox Accounts") into which Revenues collected by Sacramento Municipal Utility District ("SMUD") on behalf of Borrower will be deposited and from which excess Revenues after payment of amounts due to SMUD will be transferred to Borrower's operating account. The amounts on deposit in the Lockbox Accounts, to the extent of SMUD's interest therein, will not be subject to setoff or other exercise of Lender's rights and remedies.

SECTION 8. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender that, as of the date of this Agreement, as of the date of each Advance, and at all times any Obligations remain outstanding to Lender:

Section 8.1. Organization and Qualification; Authority; Consents. Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the

failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Amended Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any power purchase agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

Section 8.2. Legal Effect. This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

Section 8.3. Subsidiaries. Borrower has no Subsidiaries.

Section 8.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Amended Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

Section 8.5. Financial Reports. Effective with the delivery to Lender of the financial statements required by Section 10.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

Section 8.6. Full Disclosure. The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the

basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

Section 8.7. Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

Section 8.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

Section 8.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 8.10. Compliance with Laws. Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.11. Other Agreements. Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.12. No Default. No Default or Event of Default has occurred or is continuing.

Section 8.13. Sovereign Immunity. Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document to which Borrower is a party (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with this Agreement or any other Loan Document to which Borrower is a party.

Section 8.14. Anti-Terrorism Laws. Borrower is not in violation of any law relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the Patriot Act.

SECTION 9. CONDITIONS PRECEDENT.

Section 9.1. All Advances. The obligation of Lender to make any Advance is subject to the following conditions precedent:

(a) Each of the representations and warranties set forth in Section 8 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 8.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 10.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

(c) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

- (i) this Agreement, the Revolving Note, the Assignment of Deposit Account and Document Summary;
- (ii) the First Modification of Term Note in the form provided herewith, advancing the Maturity Date of the Term Loan from November 1, 2024 to the Revolving Credit Termination Date;
- (iii) the Amended Joint Powers Agreement;
- (iv) a favorable written legal opinion from Borrower's counsel as to the formation, existence and good standing of Borrower; the power and authority of Borrower to enter into this Agreement and perform its Obligations hereunder; and the due execution, validity and enforceability of this Agreement and the other Loan Documents;
- (v) in the case of a Cash Advance, a Request for Advance in the form of **Exhibit D** with supporting documentation;
- (vi) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (vii) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (viii) evidence of Borrower's good standing in the state of California;
- (ix) payment by Borrower of all fees and other amounts required to be paid pursuant to Sections 5.1 and 12.4(a) of this Agreement;

- (x) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;
 - (xi) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require; and
 - (xii) evidence of Liability Insurance in form and substance satisfactory to Lender.
- (d) In the case of a Letter of Credit Advance, the request is made in accordance with Section 4;
- (e) The Debt Service Reserve Account shall be funded with a balance of not less than \$1,100,000.00; and
- (f) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

SECTION 10. COVENANTS.

Borrower covenants and agrees as follows:

Section 10.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

Section 10.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an unaudited balance sheet of Borrower as of the last day of the month then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred eighty (180) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in

comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an aged list of accounts receivable and accounts payable;

(d) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(e) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(f) promptly upon request, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 10.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

Section 10.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 7.

Section 10.4. Exclusive Deposit Relationship. Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by an additional **2.00** percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 10.6. Adjusted Tangible Unrestricted Net Position. Borrower shall maintain a minimum Adjusted Tangible Unrestricted Net Position not at any time less than Eight Million and

00/100 Dollars (\$8,000,000.00), measured annually as of Fiscal Year End commencing with the fiscal year ending June 30, 2020.

“*Adjusted Tangible Unrestricted Net Position*” means total Adjusted Unrestricted Net Position less any intangible assets.

“*Adjusted Unrestricted Net Position*” means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the balance of deposits in the Debt Service Reserve Account.

“*Net Position*” means total assets less total liabilities.

Section 10.7. Change in Net Position. Borrower must achieve a cumulative (year-to-date) change in Net Position, measured as of the end of each fiscal quarter, equal to or better than:

Period	Maximum Loss
6/30/2020 – 9/30/2020	(\$50,000.00)
6/30/2020 – 12/31/2020	(\$340,000.00)
6/30/2020 – 3/31/2021	(\$3,300,000.00)
6/30/2020 – 6/30/2021	(\$3,400,000.00)

Section 10.8. Total Liabilities to Tangible Unrestricted Net Position. Borrower shall maintain a maximum Total Liabilities to Tangible Unrestricted Net Position not at any time greater than **1.50:1.00**, measured quarterly as of the end of each calendar quarter.

“*Total Liabilities to Tangible Unrestricted Net Position*” means the sum of all current liabilities, non-current liabilities and Contingent Liabilities, divided by Tangible Unrestricted Net Position.

“*Tangible Unrestricted Net Position*” means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, less intangible assets.

“*Contingent Liabilities*” means any present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities include all outstanding Letter of Credit Advances, and exclude power purchase contingencies and amounts available for Advances under the Revolving Credit Commitment.

Section 10.9. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be

advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

Section 10.10. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) Liens created pursuant to an approved power purchase agreement; and

(e) Liens arising under the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (e) of this Section 10.10 are collectively referred to in this Agreement as the "*Permitted Liens*."

Section 10.11. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports

an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

Section 10.12. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 10.13. Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 10.14. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 10.15. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 10.16. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 10.17. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 10.18. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 10.19. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money. Without Lender's prior written consent, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money in excess of Five Hundred Thousand Dollars (\$500,000.00) in the aggregate; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

Section 10.20. Resource Adequacy. As soon as available, Borrower will deliver to Lender all material information with respect to any Resource Adequacy Contract entered into by Borrower from and after the date of this Agreement, and will promptly execute and deliver to Lender such documents, instruments, assignments, consents and agreements as Lender may reasonably request for the purpose of creating, perfecting, maintaining and enforcing Lender's security interest therein.

SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

Section 11.1. Events of Default. Any one or more of the following will constitute an "Event of Default" hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's operations or financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired, or a new law or regulation is passed (or an existing law or regulation is changed) which has a material adverse effect on Borrower; or

(g) a JPA Member fails to continue to be a member of Borrower; or

(h) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(i) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(j) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

Section 11.2. Non-Insolvency Default Remedies. Upon the occurrence of any Event of Default described in clauses (a) through (g) or (j) of Section 11.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

Section 11.3. Insolvency Default Remedies. Upon the occurrence of any Event of Default described in Section 11.1(h)-(i), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

SECTION 12. MISCELLANEOUS.

Section 12.1. Holidays. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

Section 12.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 12, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 12.3. Amendments, Etc. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 12.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

Section 12.5. Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "Indemnified Person") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "Indemnified Liabilities"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 12.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 12.5 shall be paid within thirty (30) days after demand.

Section 12.6. Right of Set Off. To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

Section 12.7. Survival of Representations. All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this

Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 12.8. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Valley Clean Energy Alliance
604 2nd Street
Davis, CA 95616
Attention: Mitch Sears, Interim General Manager

To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Telephone: (916) 567-2700
Fax: (916) 567-2780
Attention: R.J. Wood, Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 12.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

Section 12.9. Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 12.10. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.11. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

Section 12.12. Assignments, Binding Nature, Governing Law, Etc. This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

Section 12.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

Section 12.14. Time is of the Essence. Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

Section 12.15. Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further

waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 12.16. No Recourse Against Constituent Members of Borrower. Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Amended Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.


Section 12.17. Restated Credit Agreement. This Agreement amends, restates and replaces in its entirety that certain Credit Agreement between Borrower and Lender dated May 16, 2018, as previously amended from time to time.

[Signatures appear on following page.]

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

VALLEY CLEAN ENERGY ALLIANCE

By:  _____

Name: Mitch Sears

Its: Interim General Manager

RIVER CITY BANK

By:  _____

Name: RS Wood

Its: Vice President

EXHIBIT A

Definitions

“*Accounts*” means all rights to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) for energy provided or to be provided.

“*Adjusted Tangible Unrestricted Net Position*” is defined in Section 10.6.

“*Adjusted Unrestricted Net Position*” is defined in Section 10.6.

“*Advance*” is defined in Section 2.1.

“*Agreement*” means this Amended and Restated Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Amended Joint Powers Agreement*” means the amended Joint Powers Agreement of Borrower.

“*Applicable Rate*” means, for the Revolving Credit, a variable rate of interest equal to the One-Month UST plus 2.00% per annum, subject to a floor of 2.00% per annum. The Applicable Rate is subject to increase as provided in Section 10.4.

“*Assignment of Deposit Account*” means the Assignment of Deposit Account dated as of the date of this Agreement, executed by Borrower with respect to the Debt Service Reserve Account.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 9.1(c)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Availability*” is defined in Section 5.1(c).

“*Average Daily Unused Amount*” is defined in Section 5.1(c).

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*CAL ISO*” means California Independent System Operator.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Cash Advance*” is defined in Section 2.1.

“*Cash Advance Sublimit*” is defined in Section 2.1.

“*Cash Collateralize*” means, to pledge and deposit with or deliver to Lender, as collateral for the Obligations, in each case, in Dollars and in such amount as Lender may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to Lender. “*Cash Collateral*” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“*Contingent Liabilities*” is defined in Section 10.8.

“*CPUC*” means the California Public Utilities Commission.

“*Debt Service Reserve Account*” is defined in Section 7.1.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Default Rate*” means the Applicable Rate plus five percent (5.0%).

“*Dollars and \$*” mean lawful money of the United States.

“*Event of Default*” is defined in Section 11.1.

“*Fiscal Year End*” means June 30.

“*Flat Fee*” is defined in Section 4.8.

“*GAAP*” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity

exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

"Honor Date" is defined in Section 4.3.

"Indebtedness for Borrowed Money" means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker's acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

"Indemnified Liabilities" is defined in Section 12.5.

"Indemnified Person" is defined in Section 12.5.

"Initial Rate Set Date" means September 1, 2020.

"ISP" is defined in Section 4.5.

"Issuance Fee" is defined in Section 4.8.

"JPA Members" means the City of Woodland, the City of Davis, the City of Winters and the County of Yolo.

"Lender" is defined in the introductory paragraph.

"Letter of Credit Advance" is defined in Section 2.1.

"Letter of Credit Note" is defined in Section 2.3.

"Lien" means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"Loan Documents" means this Agreement, the Notes, the Assignment of Deposit Account, and all other documents, certificates, instruments and agreements executed by Borrower in connection with the Revolving Credit.

"Lockbox Accounts" is defined in Section 7.5.

"Maintenance and Operation Costs" shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and

necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and a consulting engineer, and including Borrower's share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

"*Maturity Date*" means, for any Note, the date so specified in such Note as the Maturity Date.

"*Net Position*" is defined in Section 10.6.

"*Notes*" refers collectively to the Revolving Note, the Letter of Credit Note(s) and the Term Note.

"*Obligations*" means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

"*One-Month UST*" means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the average yield of a range of U.S. Treasury securities adjusted to a constant maturity of one (1) month as published by the Board of Governors of the Federal Reserve System on page H.15 (or, if Lender determines, in its sole discretion, that this rate has become unavailable or unreliable, either temporarily, indefinitely or permanently, Lender may amend this Agreement and/or the Notes by designating a substantially similar rate and add a positive or negative margin (percentage added to or subtracted from the substitute rate) as part of the rate determination) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

"*Payment Date*" means, other than the Revolving Credit Termination Date or any Maturity Date, the first day of each calendar month.

"*Permitted Liens*" is defined in Section 10.10.

“*Person*” means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“*Rate Change Date*” means the first calendar day of each calendar month.

“*Reimbursement Date*” is defined in Section 4.3.

“*Related Parties*” means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

“*Resource Adequacy Contract*” means any agreement entered into by Borrower for the purpose of complying with CPUC resource adequacy requirements.

“*Revenues*” means the revenues of Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course of business and (iii) earnings resulting from any reappraisal, revaluation or write-up of fixed or capital assets.

“*Revolving Credit*” is defined in Section 2.1.

“*Revolving Credit Commitment*” means \$7,000,000.00.

“*Revolving Note*” is defined in Section 2.3.

“*Revolving Credit Termination Date*” means September 1, 2021.

“*SMUD*” is defined in Section 7.5.

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*Tangible Unrestricted Net Position*” is defined in Section 10.8.

“*Term Loan*” means the loan evidenced by the Term Note.

"*Term Note*" means that certain Term Note dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of \$1,976,610.13, as amended from time to time.

"*Total Liabilities to Tangible Unrestricted Net Position*" is defined in Section 10.8.

"*UCC*" means the Uniform Commercial Code as enacted in the State of California.

"*UCP*" is defined in Section 4.5.

"*Unreimbursed Amount*" is defined in Section 2.3.

"*Winding-Up*" means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person's Properties.

EXHIBIT B

AMENDED AND RESTATED REVOLVING CREDIT PROMISSORY NOTE

\$7,000,000.00

September 15, 2020

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of SEVEN MILLION and No/100 Dollars (\$7,000,000.00), pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of September 15, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Amended and Restated Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on October 1, 2020, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an

agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

This Note amends, restates and replaces in its entirety that certain Revolving Credit Promissory Note dated May 16, 2018, made by Borrower and payable to the order of Lender in the original principal amount of \$11,000,000.00.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

VALLEY CLEAN ENERGY ALLIANCE

By: _____

Name: _____

Its: _____

EXHIBIT C

LETTER OF CREDIT NOTE

\$ _____

Date: _____

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of _____ (\$_____,000.00) pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of September 15, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Letter of Credit. This Note is executed in connection with a Letter of Credit issued by _____ ("*Issuing Bank*"), dated _____, in the face amount of \$_____, in favor of _____ (as Beneficiary) and identified as number: _____ (the "*Letter of Credit*").

Draw or Demand under the Letter of Credit. Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

Payment Terms. Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than 3 calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

Credit Agreement and Cash Collateral. If (i) the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, or (ii) the Revolving Credit Commitment terminates or is unavailable to Borrower for any reason prior to the surrender of the Letter of Credit as provided above, or (iii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, upon request by Lender, Borrower shall immediately provide

cash collateral to Lender with a value of not less than 110% of the stated principal amount of this Note or the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

EXHIBIT D

REQUEST FOR ADVANCE

\$7,000,000 REVOLVING CREDIT

VALLEY CLEAN ENERGY ALLIANCE (“BORROWER”) HEREBY REQUESTS AN ADVANCE UNDER THE REVOLVING CREDIT IN ACCORDANCE WITH THE AMENDED AND RESTATED CREDIT AGREEMENT DATED AS OF SEPTEMBER ___, 2020, BETWEEN BORROWER AND RIVER CITY BANK (“LENDER”).

DATE OF REQUEST: _____

AMOUNT OF REQUESTED ADVANCE: \$ _____

PURPOSE OF ADVANCE:

- ___ - **THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE FOLLOWING POWER PURCHASE AGREEMENT:** _____.
- ___ - **THIS ADVANCE WILL COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING _____, 20__ . YOU ARE AUTHORIZED TO DEPOSIT LOAN PROCEEDS INTO CHECKING ACCOUNT: 8855413324**
- ___ - **ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT.**
- ___ - **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:**

COMPANY NAME: _____

WIRE INSTRUCTIONS:

BANK NAME: _____

ADDRESS: _____

ROUTING NUMBER: _____

ACCOUNT NUMBER: _____

OTHER REFERENCE: _____

BORROWER CERTIFICATION:

BORROWER HEREBY CERTIFIES THAT:

- (I) AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL OUTSTANDING ADVANCES WILL NOT EXCEED THE REVOLVING CREDIT COMMITMENT THEN IN EFFECT;
- (II) THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND
- (III) NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.
- (IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING LOSSES.

VALLEY CLEAN ENERGY ALLIANCE

BY: _____

NAME: _____

ITS: _____

FIRST MODIFICATION OF TERM NOTE

This FIRST MODIFICATION OF TERM NOTE (this "*Modification*") is entered into as of September 15, 2020, by and between VALLEY CLEAN ENERGY ALLIANCE, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), and RIVER CITY BANK ("*Lender*"), with reference to the following facts:

WHEREAS, Borrower has executed and delivered to Lender that certain Term Note (the "*Term Note*") dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of \$1,976,610.13;

WHEREAS, the Term Note evidences a loan (the "*Term Loan*") from Lender to Borrower representing the conversion of outstanding advances under a revolving line of credit in accordance with the terms of that certain Credit Agreement (the "*Original Credit Agreement*") dated as of May 16, 2018, between Borrower and Lender;

WHEREAS, Borrower and Lender have entered into that certain Amended and Restated Credit Agreement (the "*Amended and Restated Credit Agreement*") dated as of September 15, 2020, pursuant to which the parties have agreed to certain modifications of the Original Credit Agreement, including but not limited to an extension of the Revolving Credit Termination Date (as such term is defined therein) to September 1, 2021;

WHEREAS, it is a condition to the Amended and Restated Credit Agreement that the maturity date of the Term Loan be advanced from November 1, 2024 to September 1, 2021, to coincide with the Revolving Credit Termination Date;

NOW THEREFORE, in consideration of the foregoing recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree to modify the Term Note as follows:

1. Borrower will pay this loan in equal principal payments of \$32,943.50 each. Borrower's next principal payment is due October 1, 2020, and all subsequent principal payments are due on the same day of each month after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning October 1, 2020, with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment is due **September 1, 2021**, and will be for all outstanding principal and all accrued interest not yet paid.

Except as expressly modified herein, the terms of the Term Note shall remain unchanged and in full force and effect. Nothing in this Modification shall constitute a satisfaction of the Term Loan or a waiver of Lender's right to require strict performance of the Term Loan and all other obligations of Borrower to Lender.

This Modification contains the entire agreement between the parties with respect to the matters addressed herein and supersedes all prior agreements and understandings with respect to thereto. This Modification may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

IN WITNESS WHEREOF, the undersigned have executed this Modification as of the date first written above.

VALLEY CLEAN ENERGY ALLIANCE

By: [Signature]
Name: Mitch Sears
Its: Interim General Manager

RIVER CITY BANK

By: [Signature]
Name: RJ Wood
Its: Vice President

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021 - ____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
AUTHORIZING THE EXTENSION OF ITS REVOLVING LINE OF CREDIT AND TERM NOTE WITH
RIVER CITY BANK**

WHEREAS, VCEA solicited competitive bids for banking and credit services and selected River City Bank (RCB) to lend VCEA up to \$11 million as a revolving line of credit to fund power purchases as part of administrating CCE programs, which had a term of 12-months at variable rates with an option to extend another 6 months and was convertible to a five-year term loan with a fixed interest rate;

WHEREAS, on May 10, 2018, the VCEA Board via Resolution 2018-012 approved the Credit Agreement between VCEA, as borrower, and the RCB, as lender;

WHEREAS, the \$11 million revolving line of credit expired on May 15, 2019 and on April 11, 2019, the Board via Resolution 2019-005 extended the line of credit for another 6 months, extending the term to November 15, 2019;

WHEREAS, on October 10, 2019, the Board approved via Resolution 2019-014 converting the \$1,676,610 Revolving Line of Credit (RLOC) balance to an amortized 5-year term loan; approved the renewal terms consistent with the October 3, 2019 term sheet for the existing RLOC for a new expiration date of November 15, 2020; and authorized VCE interim General Manager, in consultation with VCE Legal Counsel, to negotiate the Credit Agreement with RCB based on the renewal terms;

WHEREAS, Since November 15, 2019, VCE has received a series of extensions to the RLOC from RCB. The current renewal expired on August 31, 2020;

WHEREAS, on September 10, 2020, the Board approved via Resolution 2020-026 an one-year extension of the RLOC to September 1, 2021, with a revised limit of \$7 million, of which all is available for Letters of Credit and \$5 million is available for Cash Advances to fund operational needs. Additionally, RCB and VCE have agreed in principal to a modification to the Term Note, including an earlier Final Payment date of September 1, 2021; and,

WHEREAS, RCB and VCE have agreed in principal to a short-term extension of the amended and restated credit agreement inclusive of the revolving line of credit and term note as approved by Resolution 2020-026 on September 10, 2020.

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

Approves and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE for the short term extension of the Amended and Restated Credit Agreement (RLOC Agreement) and Term Note from River City Bank (RCB) approved on September 10, 2020.

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

Attachments:

1. VCE Resolution 2020-026 dated September 10, 2020

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-026

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
AUTHORIZING THE EXTENSION OF REVOLVING LINE OF CREDIT WITH RIVER CITY BANK AND
MODIFICATION OF TERM NOTE**

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, VCE solicited competitive bids for banking and credit services and selected River City Bank (RCB) to lend VCEA up to \$11 million as a revolving line of credit to fund power purchases as part of administrating CCE programs, which had a term of 12-months at variable rates with an option to extend another 6 months and was convertible to a five-year term loan with a fixed interest rate;

WHEREAS, on May 10, 2018, the VCE Board via Resolution 2018-012 approved the Credit Agreement between VCEA, as borrower, and the RCB, as lender;

WHEREAS, the \$11 million revolving line of credit expired on May 15, 2019 and on April 11, 2019, the Board via Resolution 2019-005 extended the line of credit for another 6 months, extending the term to November 15, 2019;

WHEREAS, on October 10, 2019, the Board approved via Resolution 2019-014 converting the \$1,676,610 Revolving Line of Credit (RLOC) balance to an amortized 5-year term loan; approved the renewal terms consistent with the October 3, 2019 term sheet for the existing RLOC for a new expiration date of November 15, 2020; and authorized VCE interim General Manager, in consultation with VCE Legal Counsel, to negotiate the Credit Agreement with RCB based on the renewal terms;

WHEREAS, Since November 15, 2019, VCE has received a series of extensions to the RLOC from RCB. The current renewal expired on August 31, 2020; and,

WHEREAS, RCB and VCE have agreed in principal to a one-year extension of the RLOC to September 1, 2021, with a revised limit of \$7 million, of which all is available for Letters of Credit and \$5 million is available for Cash Advances to fund operational needs. Additionally, RCB and VCE have agreed in principal to a modification to the Term Note, including an earlier Final Payment date of September 1, 2021, which may be extended by RCB at the next renewal period.

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

1. Approves the attached draft Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB), and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE.

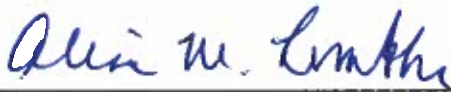
PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the 10th day of September 2020, by the following vote:

AYES: Saylor, Carson, Stallard, Cowan, Sandy, Frerichs, Barajas

NOES: None

ABSENT: Loren

ABSTAIN: None



Alisa M. Lembke, VCE Board Secretary



Don Saylor, VCE Chair

Attachments:

1. Draft Amended and Restated Credit Agreement
2. Draft Modification of Term Note from River City Bank

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors

FROM: Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Services agreement with Energeia USA to study and present options for achieving a 100% carbon neutral resource portfolio by 2030

DATE: July 8, 2021

RECOMMENDATION

Authorize the Interim General Manger to execute a consulting services agreement with Energeia USA to study and present options for achieving a 100% carbon neutral resource portfolio as well as 100% carbon free resource portfolio (carbon free hour by hour) by 2030 for an amount not to exceed \$60,000 and to expire January 31, 2022.

BACKGROUND

In November 2020 the Board approved VCE’s first strategic plan. One of the goals in the plan was to work towards a carbon neutral portfolio. As part of that goal, staff is to study and present options for achieving a 100% carbon neutral resource portfolio as well as 100% carbon free resource portfolio (carbon free hour by hour) by 2030. Working with the newly formed Community Advisory Committee (CAC) task group on this subject, staff and the task group developed a request for proposals (RFP) for consulting services to study this goal (attachment 1). The RFP was released in April 2021, bids were received and evaluated, and staff has selected Energeia USA to perform this study.

NEXT STEPS

The scope of work is to take place over the next six months with periodic updates being provided to both the Board and the CAC. The final report is anticipated to be available and presented towards the end of 2021 or early 2022.

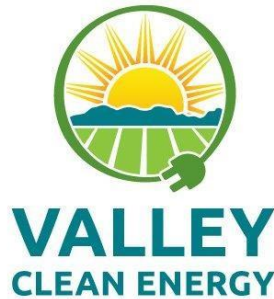
CONCLUSION

Staff is recommending that the Board authorize the Interim General Manager to execute a consulting services agreement with Energeia USA to complete work associated with strategic plan goal of a carbon neutral portfolio.

ATTACHMENTS

1. RFP for consulting services
2. Agreement between VCE and Energeia USA
3. Resolution

**Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616
Phone: (530) 446-2750**



**REQUEST FOR PROPOSALS
FOR
100% CARBON FREE PORTFOLIO STUDY**

**PROPOSALS ARE DUE:
Friday, May 21, 2021 BY 4:00 P.M. (Pacific Daylight Time)
Proposals must be e-mailed in PDF form to Gordon.Samuel@ValleyCleanEnergy.org**

**Valley Clean Energy Alliance is a Joint Powers Authority
consisting of the Cities of Davis, Woodland, and Winters and the County of Yolo.**

Scope of Services**100% CARBON FREE PORTFOLIO STUDY****I. INTRODUCTION**

Valley Clean Energy is seeking a qualified consultant (Contractor) to explore the feasibility, cost and benefit of pursuing a 100% carbon free portfolio. This 100% carbon free portfolio will be developed as an option to be considered as part of VCE's Strategic Plan and in VCE's upcoming Integrated Resource Plan (IRP). It is intended that all elements of the generation portfolio will be renewable and/or carbon free as defined below.

II. BACKGROUND

2.1 Valley Clean Energy Alliance or Valley Clean Energy (VCE), is a joint powers authority providing a state-authorized Community Choice Energy (CCE) program. Participating VCE governments include the City of Davis, the City of Woodland, the City of Winters and the unincorporated areas of Yolo County. PG&E continues to deliver the electricity procured by VCE and to perform billing, metering, and other electric distribution utility functions and services. Customers within the participating jurisdictions have the choice not to participate in the VCE program.

2.2 Since VCE started serving load in June 2018, VCE has added resources under long term contracts and is gradually building up a portfolio of short and long term assets in line with its vision and the demand of its customers. To date, VCE has relied mainly on market purchases of energy, Resource Adequacy (RA), and Renewable Energy Credits (RECs) in order to serve its electric demand and meet regulatory requirements with respect to resource adequacy and renewable energy. Starting in 2021 VCE will increasingly meet electric demand with resources under long term contracts. VCE has contracted for 50 MW of new solar resource (PV – photovoltaic) located in Kings County, CA and a 3 MW PV + 3 MW storage (BESS – battery energy storage system) project in Yolo County, CA to come online before the end of 2021. In 2022, two additional solar + storage power purchase agreements (PPAs) have been executed (90 MW PV + 75 MW BESS in San Bernardino County, CA and 20 MW PV + 6.5 MW BESS in Yolo County, CA). Finally, two other long-term RA capacity contracts have been executed - 7 MW of demand response beginning in the Summer 2021 and another 2.5 MW of stand-alone battery storage by Summer 2022.

III. DETAILED SCOPE OF WORK

The scope of work for this project includes the following:

- Develop a 100% renewable portfolio study report
 - o Net zero and 24x7 by 2030
- Develop a 100% carbon free portfolio study report
 - o Net zero and 24x7 by 2030
- Use production cost model to simulate generation of existing and future resources

- o Develop lowest cost resource mix at different renewable/carbon free penetrations levels
- Perform risk analysis of the scenarios/contingencies
 - o Contractor invited to present scenarios/contingencies to consider
- Provide industry trends for renewable resources, large hydro, storage, etc.

3.1 Renewable Electricity – includes “biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current”, [(Public Resources Code § 25741), Renewables Portfolio Standard (RPS). (Public Utilities Code § 399.11 et seq.)] Renewable electricity is assumed to be free of GHG emissions.

3.2 Carbon Free Electricity – Any electricity that meets the definition of renewable electricity above plus other sources considered zero emission. These zero emission sources now in California include existing large hydro (greater than 30 MW) and existing nuclear. New technologies not now included in the zero-emission category can be added in the future. Carbon Free power uses no fossil fuel generation. See <https://focus.senate.ca.gov/sb100/faqs> for FAQs on existing large hydro and existing nuclear and their inclusion in SB 100. The percent of the power that must meet RPS is governed by SB 100 (De Leon, 2018) and shall be equal to or greater than 60% for 2030 and beyond. By 2045 all electricity in California is to be Carbon Free.

3.3 Hour by Hour // 24/7 – The Carbon Content of the Electricity provided is analyzed on an hour by hour basis. And for our purposes is either Renewable or Carbon Free Electricity each and every hour of the day.

3.4 Carbon Neutrality – The net carbon content of the electricity is analyzed over a period of time (usually a year) and the net carbon content is zero. During this period both sources that emit carbon and those that do not can be used, but the net carbon emissions are zero. Net zero can be achieved if zero carbon electricity is overproduced at certain times and that excess zero carbon electricity is demonstrated through available data to displace carbon emitting electricity on the grid at that time. If enough zero carbon electricity is overproduced, the net carbon emissions can be zero.

- This area purposely left blank -

POWER SOURCE	RENEWABLE	<u>R/HBH</u>	<u>R/CN</u>
	CARBON-FREE	<u>CF HBH</u>	<u>CF/CN</u>
		HOUR BY HOUR	CARBON NEUTRAL

ANAYLYSIS TIME FRAME

“R/HBH/CF/CN”: Renewable /Hour by hour/Carbon free/Carbon neutral

IV. PROFESSIONAL SERVICES

The following tasks and are incorporated into the Scope of Work.

4.1 Project Tasks

Contractor shall prepare and provide the following:

4.2 Portfolio Study Reports

The Portfolio Study Report (Report) shall describe at a high level the method used to perform the work. The fundamental algorithmic assumptions and approach must however be logical, consistent and explained in narrative form. The inputs used by the Contractor should align with the inputs provided by VCE. Reports and supporting documents shall be provided in .pdf, WORD, Excel or other commonly used formats.

Potential resources that could be included in the portfolios

- Solar (Front of meter, FOM/Behind the meter, BTM)
- Wind
- Hydro
- Pump Storage

- Geothermal
- Biomass
- Battery Storage (FOM/BTM)
- Nuclear
- Energy Efficiency
- Demand Response
- Demand Management

4.3 Scenario Scope

The Contractor must use a production cost model to simulate the generation of existing and future resources. The results for each scenario must be summarized in the Report to at least include the following: costs, generation of each resource (GWh), market purchases (GWh), demand response deployment, behind the meter deployments, nameplate capacity of new resources, battery configurations (capacity and duration), imports, amount of local generation and CO2 equivalent tons.

The Contractor shall propose and discuss with VCE any viable scenarios based on Contractor's experience and expertise. These proposed scenario submittals will be reviewed by VCE. Each scenario shall include all costs on an annual basis for PPA energy costs, transmission or other delivery costs, fuel costs and any fixed and variable O&M. Contractor shall complete a quantitative evaluation for each scenario. Each scenario, unless otherwise noted, shall be modeled on an hourly basis. The Loss of Load Expectation (LOLE) for each scenario should not exceed one (1) day in ten (10) years.

4.4 Model VCE reference case. Align with the assumptions made for the reference case and identify any differences.

Contractor will solve for the mix of renewable or carbon free resources that results in the lowest cost plan. All loads will be served by assets procured by VCE. VCE will not rely on spot energy purchased from outside resources.

4.5 Risk Analysis

Attempting to achieve a 100% carbon free portfolio entails risks and unknowns, some of which VCE is able to anticipate, and others that may not be obvious. This section lists some of the potential risks that VCE has so far identified. The Contractor shall explain the risk and mitigation for each concern listed below.

It is also anticipated that the list below is likely incomplete, and for that reason the Contractor is expected to address and explain in the Report any additional risks and mitigations that it may be aware of or discover during the course of the study.

4.5.1 Particular attention shall be paid to the capacity and duration of output of any energy storage facilities proposed. There is some concern for instance, that solar

sources of supply may not be available or adequate for extended times, during some winter peak conditions. The storage must be capable of covering the deficit.

4.5.2 If large amounts of storage are necessary through the variability of renewable sources, how will it be ensured that storage can be kept sufficiently charged using only the renewables? Would access to a greater amount of renewables, either from the grid or locally connected, be required to charge the storage and maintain a 100% renewable posture? What would be the estimated cost?

For instance, if renewable resources are installed or purchased only in quantities sufficient to serve VCE's peak load, when and how often would it be assumed those resources could be successfully diverted to keep the storage charged to acceptable levels? Would it be necessary to purchase more renewables strictly to serve storage?

4.5.3 There could be a risk in purchasing access to renewables or carbon free in quantities sufficient to ensure the ability to reliably serve load for the full 8760 hours of the year. The risk is having significant excess energy at certain times of the year or day. What would be the best strategy for dealing with this issue? Exporting to the grid? Curtailing the renewable/carbon free energy?

The Contractor shall identify in each scenario evaluated the magnitude in MWs and the risk in annual hours of having significant excess energy.

4.5.4 How will demand response programs be deployed? What is the magnitude, duration (per day/per year), and time of day that these programs are expected to be implemented?

4.6 Discussion of possible future industry trends in renewable resources, carbon free resources and storage

Contractor shall also gather input on trends and emerging technologies that could reach maturity by 2030, and which could help in achieving the 100% renewable or carbon free goal.

The Contractor shall provide in the Report a separate discussion of what is considered to be emerging and future trends in renewable energy, carbon free energy, storage and other potential technologies that could aid in achieving a goal of 100% carbon free portfolio. The discussion should include future factors such as, but not limited to, pricing, capacity factor, efficiency, new inverter technology, operating capabilities, and whatever else the Contractor may consider to be relevant.

The Contractor shall provide in support of this discussion of future trends a survey or summary of pertinent industry sources, referenced as appropriate.

V. PROPOSER MINIMUM QUALIFICATIONS

The proposals submitted in response to this Request for Proposals shall be evaluated for award based on the following criteria and weighting.

Item	Criteria Description	Weighting
	<p>Experience and Qualifications</p> <ol style="list-style-type: none"> 1. Experience of firm 2. Resumes of staff designated to support this scope 3. CCA/Public Power/Energy experience 	45%
	Compliance with VCE Sample Contract	10%
	Price	45%
	Total	100%

5.1 Proposal Submittal Requirements

1. Ten pages maximum submitted electronically. Executive Summary with brief description of company including Firm or individual name and contact information, including e-mail and website addresses, year organized, principals with the firm, types of work performed, number of employees.
2. Resumes of key staff that would work on VCE projects.
3. Information on any previous experience or services provided, including CCA experience.
4. Other factors or special considerations you feel would influence the selection of your proposal.
5. List of references and contact information.

5.2 Miscellaneous

1. Additional Information

Scope of Services may be revised upon mutual agreement between the Contractor and VCE.

2. Ownership of Work Products

All notes, documents, and final products in all native formats (e.g., Word, Excel, PowerPoint, databases, handwritten notes) produced in the performance of this agreement shall be the property of VCE and shall not be shared with other entities without permission from VCE staff.

3. Request for Proposal Schedule

VCE anticipates that the process for selection of Carbon Free Portfolio Study and awarding the contract will be according to the following tentative schedule.

5.3 Schedule

Milestone Description	Date
Issue RFP	4/30/2021
Return NDA	5/12/2021
Responses due	5/21/2021
Consultant selection	6/17/2021
Study work	Q3 2021
Final report complete	Q4 2021

5.4 Instructions to Proposers

1. Time and Manner of Submission

The Proposal shall be submitted electronically to and received by VCE's office no later than 4:00 p.m. (PDT) on Friday, May 21, 2021.

Submit to:

Gordon Samuel, Assistant General Manager
Email: gordon.samuel@ValleyCleanEnergy.org

- Each proposal shall include the full business legal name, DBA, and address and shall be signed by an authorized official of the company. The name of each person signing the proposal shall be typed or printed below the signature.
- All proposals submitted become the property of VCE.

2. Explanations to Proposers

All requests, questions or other communications regarding this RFP shall be made in writing to VCE via email. **Address all communications to Gordon Samuel (gordon.samuel@valleycleanenergy.org).** To ensure that written requests are received and answered in a timely manner, email correspondence is required.

VCE will not be bound by any oral interpretation of the Request for Proposal, which may be made by any of its representatives or employees, unless such interpretations are subsequently issued in the form of an addendum to this Request for Proposal.

3. Withdrawal or Modification of Proposals

Proposals may be modified or withdrawn only by an electronic request received by VCE prior to the Request for Proposal due date.

4. Revisions and Supplements

Addenda: If it becomes necessary to revise or supplement any part of this Request for Proposal an addendum will be provided.

5. Proposal Evaluation and Selection Process

The proposals submitted shall be evaluated for award based on the criteria described in the "Proposal Evaluation Criteria" section of this Request for Proposal.

VCE may request additional information from any or all Proposers after the initial evaluation of the proposals to clarify terms and conditions.

Based on VCE's review of the proposals received, a "short listed" group of Proposers may be selected. The "short listed" firms may be required to make verbal presentations of their qualification to VCE. If a presentation is determined to be required, the presentation will be considered in the overall technical rating.

The contract will be awarded to the best-qualified Proposer, after price and other factors have been considered, provided that the proposal is reasonable and is in the best interests of VCE to accept it.

The right is reserved, as the interest of VCE may require, to reject any or all proposals and to waive any irregularity in the proposals received.

Within fourteen (14) calendar days after notice of award, the successful Proposer shall deliver to VCE the required insurance certificates as per section 3.10 of the sample contract and the signed copies of the contract. The contract forms will be forwarded to the Proposer with the award notification.

6. Duration of Contract

This contract shall be for one year, subject to approval by VCE's Board of Directors of the corresponding annual budget, unless otherwise mutually agreed upon in writing.

The Budget is subject to the approval of VCE's Board of Directors.

7. Qualifications of Proposers

VCE expressly reserves the right to reject any proposal if it determines that the business and technical organization, financial and other resources, or experience of the Proposer, compared to the work proposed justifies such rejection.

8. Proposal Preparation Costs

The costs of developing proposals are entirely the responsibility of the Proposer and shall not be charged in any manner to VCE.

9. Conflicts

If conflicts exist between the contract and the other elements of this Request for Proposal, the contract prevails. If conflict exists within the contract itself, the Terms and Conditions govern, followed by Scope of Services. If conflict exists between the contract and applicable Federal or State law, rule, regulation, order, or code; the law, rule, regulation, order, or code shall control. Varying levels of control between the Terms and Conditions, drawings and documents, laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement(s) shall control.

10. Manner and Time of Payment

At completion of the scope, Contractor shall submit an invoice for the lump sum of the work performed.

11. Subcontractors

The Proposers must describe in their proposals the areas that they anticipate subcontracting to specialty firms. Identify the firms and describe how Proposer will manage these subcontracts.

Contractor will pay subcontractors in a timely manner.

Nothing contained in the Contract shall create any contractual relation between any subcontractor and VCE.

12. Notice Related to Proprietary/Confidential Data

Proposers are advised that the California Public Records Act (the "Act", Government Code §§ 6250 et seq.) provides that any person may inspect or be provided a copy of any identifiable public record or document that is not exempted from disclosure by the express provisions of the Act. Each Proposer shall clearly identify any information within its submission that it intends to ask VCE to withhold as exempt under the Act. Any information contained in a Proposer's submission which the Proposer believes qualifies for exemption from public disclosure as "proprietary" or "confidential" must be identified as such at the time of first submission of the Proposer's response to this RFP. A failure to identify information contained in a Proposer's submission to this RFP as "proprietary" or "confidential" shall constitute a waiver of Proposer's right to object to the release of such information upon request under the Act. VCE favors full and open disclosure of all such records. VCE will not expend public funds defending claims for access to, inspection of, or to be provided copies of any such records.

13. Contract

VCE's standard contract is included as Attachment A - *Sample Contract* of this Request for Proposal. VCE may reject proposals that contain exceptions to the Terms and Conditions included in the sample contract.

5.5 Performance Requirements

Performance Requirements/Acceptance Criteria

- a. All Milestones shall be completed in accordance with approved schedule.
- b. Deliverable items must be complete, legible, comprehensible, and satisfy all requirements set forth in the scope of work.

5.6 Reference Documents

VCE will provide reference documents to aid in the preparation of RFP responses after execution of the non-disclosure agreement (NDA) – a sample NDA is attached as Attachment B.

5.7 Resource and Submittal Requirements

Contractor shall provide all resources required to complete the work described herein, including but not limited to skills, services, supervision, tools, documents, information, labor, materials, equipment, computing capability, transportation, and any other necessary item or expense to fulfill the work requirements.

5.8 Project Cost

Contractor shall provide a not to exceed lump sum price. If VCE modifies the scope and additional study work needs to be performed, Contractor shall provide a change order price before initiating the work.

ATTACHMENT A - SAMPLE CONTRACT

A *SAMPLE* CONTRACT IS ATTACHED HERETO.

SAMPLE CONTRACT INTENTIONALLY REMOVED

ATTACHMENT B – SAMPLE NON-DISCLOSURE AGREEMENT

A SAMPLE NON-DISCLOSURE AGREEMENT IS ATTACHED HERETO.

SAMPLE NON-DISCLOSURE AGREEMENT INTENTIONALLY REMOVED

AGREEMENT FOR CONSULTANT SERVICES

This **Agreement** is made and entered into as of July 8, 2021 by and between **Valley Clean Energy Alliance**, a Joint Powers Authority organized and operating under the laws of the State of California with its principal place of business at 604 Second Street, Davis, California, 95616 (“VCE”), and **Energeia USA** an **S-Corp** with its principal place of business at 132 E Street, Suite 310, Davis CA 95616 (hereinafter referred to as “Consultant”). VCE and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

WHEREAS, Consultant desires to perform and assume responsibility for the provision of certain services required by VCE on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing energy advisory services to public clients and is familiar with the plans of VCE with respect to the Project, as defined below.

WHEREAS, VCE desires to engage Consultant to render such services in connection with the Valley Clean Energy Alliance (CCE) project (“Project”) as set forth in this Agreement.

NOW, THEREFORE, VCE and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to VCE all labor, services, and incidental and customary work necessary to fully and adequately perform the Energy Advisory services necessary for the Project (“Services”). The Services are more particularly described in **Exhibit A**. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. VCE shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.3 Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in **Exhibit C** and any updates to the Schedule of Services approved by VCE. Time is of the essence in the performance of this Agreement. Consultant's failure to perform any Service required under this Agreement within the time limits set forth in **Exhibit C** shall constitute a material breach of this Agreement.

1.4 Term. The term of this Agreement shall begin on the date VCE Board of Directors approves this Agreement with a term period of July 8, 2021 through January 31, 2022 or when terminated as provided in Article 5.

2. **PROJECT COORDINATION.**

2.1 VCE's Representative. VCE hereby designates Gordon Samuel and/or its designee to act as its representative for the performance of this Agreement. Gordon Samuel and/or its designee shall have the power to act on behalf of VCE for all purposes under this Agreement. VCE hereby designates Gordon Samuel and/or its designee as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates Ezra Beeman to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement. Should the Consultant's Representative need to be substituted for any reason, the proposed new

Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom VCE has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with VCE staff in the performance of the Services and shall be available to VCE staff at all reasonable times.

3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. VCE retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of the VCE; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or personnel under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and reasonable approval. Consultant shall furnish VCE with every reasonable opportunity to determine that Consultant's services are being performed in accordance with this Agreement. VCE's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 Substitution of Key Personnel. Consultant has represented to VCE that it will perform and coordinate the Services under this Agreement. Should such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon the VCE's written approval. In the event that VCE and Consultant cannot agree as to the substitution of key personnel, VCE shall be entitled to terminate this Agreement for cause.

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant's sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from the VCE, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by VCE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the VCE, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations by Consultant in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the VCE, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the VCE, its officials, directors, officers, employees, and agents free and

harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with such laws, rules or regulations.

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

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to VCE that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to VCE that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for VCE to terminate this Agreement for cause.

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

3.10.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 8 and 9 (Hired & Non Owned); and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.10.3 Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by VCE to add the following provisions to the insurance policies:

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) the VCE, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects

the VCE, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the VCE, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) the VCE, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects the VCE, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the VCE, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the VCE, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

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

3.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the VCE. Consultant shall guarantee that, at the option of the VCE, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the VCE, its directors, officials, officers, employees,

agents, and volunteers; or (b) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

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

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

3.10.9 Reporting of Claims. Consultant shall report to the VCE, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

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

3.12 Records. Consultant shall allow a representative of VCE during normal business hours to examine, audit and make transcripts of copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

4. FEES AND PAYMENT.

4.1 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**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed Sixty Thousand and No/100 Dollars (\$60,000) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Payment of Compensation. VCE shall, within 30 days of receiving an invoice for services rendered by CONSULTANT in accordance with this Agreement, review the invoice and pay all approved charges thereon.

4.3 VCE’s Right to Withhold Payment. VCE reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant’s performance of Services past the milestones established in the Schedule of Services (**Exhibit C**), or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement if VCE properly withholds payment pursuant to this Section 4.3, provided that VCE continues to make payment of undisputed amounts.

4.4 Payment Disputes. If VCE disagrees with any portion of a billing, VCE shall promptly notify Consultant of the disagreement, and VCE and Consultant shall attempt to resolve the disagreement. VCE’s payment of any amounts shall not constitute a waiver of any disagreement and VCE shall promptly pay all amounts not in dispute.

4.5 Extra Work. At any time during the term of this Agreement, VCE may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by VCE to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the VCE Manager.

4.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. VCE shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services and shall post copies at the Consultant’s principal place of business and at the Project site. Consultant shall defend, indemnify and hold the VCE, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

4.7 No Rights or Claims Against Members. VCE, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of VCE’s constituent members in connection with this Agreement.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. VCE may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without the VCE's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any material respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the material agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, VCE may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for VCE or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event VCE elects to terminate, VCE shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant pursuant to this Agreement, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses reasonably incurred by VCE in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to VCE the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by VCE in causing the Services called for under this Agreement to be provided by others, and for any costs or damages sustained by VCE by reason of Consultant's default or defective work.

5.2.4 If VCE fails to make timely payment to the Consultant or otherwise fails to perform fully any and all of the material agreements herein contained, VCE shall be in default. If such default is not cured within thirty (30) days after written notice thereof, the Consultant may, at its sole option, terminate this Agreement and VCE shall pay the Consultant all amounts due for services satisfactorily provided to VCE as of the date of Consultant's written notice of default.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, VCE reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by VCE pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith, plus (2) payment for Additional Work satisfactorily completed and

accepted by the VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the VCE . The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCE or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the VCE’s right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by VCE for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a “Force Majeure Event”). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. VCE shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of VCE. Consultant assumes no liability for VCE's use of Documents in any manner not contemplated in the scope of the Project.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of the VCE. VCE shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to VCE. Consultant shall deliver to VCE all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from VCE.

6.1.4 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by VCE to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or VCE without the written consent of VCE before any such release, unless Consultant is required to do so under applicable law.

6.2 Assignment; Successors. Upon mutual written consent, VCE and Consultant may assign this agreement and its obligations to a Joint Powers Agency formed for the purpose of forming

and operating a CCE program. Otherwise, Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the VCE. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 Hold Harmless

a. General Hold Harmless

Consultant shall indemnify and save harmless VCE and its officers, agents, employees, and servants from all claims, suits, or actions of every kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Consultant or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of VCE and/or its officers, agents, employees, or servants. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which VCE has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code

b. Intellectual Property Indemnification

Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”) except as otherwise noted by this Agreement. Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless VCE from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided in the United States. Consultant’s duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) VCE notifies Consultant promptly in writing of any notice of any such third-party claim; (b) VCE cooperates with Consultant, at Consultant’s expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without VCE’s prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on VCE, impair any right of VCE, or contain any stipulation, admission, or acknowledgment of wrongdoing on the part of VCE without VCE’s prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant’s opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes VCE’s reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant’s option and expense, either: (i) procure for VCE the right to continue using the services without

infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to VCE under this Section to the extent any otherwise covered claim is based upon: (a) any aspect of the services under this Agreement which have been modified by or for VCE (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by VCE in a manner prohibited by this Agreement.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 278 of the California Civil Code.

6.3.1 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the VCE, its directors, officials, officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as VCE may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of VCE in any capacity for VCE whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind VCE to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California and any legal actions concerning this Agreement's validity, interpretation and performance shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against the VCE. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such

Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the VCE.

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

Consultant:
Energeia USA
Ste 310, 132 E St
Davis CA 95616
Attn: Ezra Beeman

VCE:
Valley Clean Energy Alliance
604 2ND Street
Davis, CA 95616
Attn: Mitch Sears

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

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 VCE 's Right to Employ Other Consultants. VCE reserves the right to employ other consultants in connection with the Project, provided that such other consultants shall not be performing the work set forth in the Scope of Services of this Agreement.

6.9 Construction; References; Captions. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not work

days. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

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

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

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

6.14 Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the VCE.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided VCE with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist VCE in affirming compliance with this Section.

6.16 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the VCE 's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, VCE shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the VCE, during the term of his or her service with the VCE, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

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

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

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

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

6.21 Entirety of Agreement. This Agreement contains the entire agreement of VCE and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

[Signatures on following page]

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

IN WITNESS WHEREOF, VCE and Consultant have entered into this Agreement as of the date first stated above.

VCE

Energieia USA

By: _____
Mitch Sears
VCE Interim General Manager

By: _____
Its: President & CEO

Printed Name: Ceri Beeman

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

Table 1 – Breakdown of Costs by Staff Member and Project Responsibilities

Task / Sub-Task	Budget	Resources (FTE Days)		
		PD	PM/TM	TL
Project Management	\$ 7,516	1.4	2.5	0.1
Kick-off		0.3	0.3	0.1
Progress Updates		0.8	0.8	
Weekly Project Controls		0.4	1.5	
Scenario Development	\$ 2,766	0.8	0.4	0.1
Develop Scenarios		0.5	0.1	
Validate with VCE		0.3	0.3	0.1
Future Industry Trends	\$ 2,531	0.2	0.4	1.5
Research Future Energy Trends		0.2	0.4	1.5
Validate with VCE				
Load Profile Construction	\$ 4,219	0.3	0.6	2.5
Review Load and BTM Resource Data		0.2	0.3	1.3
Prepare 8760 and Statistical Inputs		0.2	0.3	1.3
Resource Cost Estimation	\$ 6,391	0.7	1.0	3.1
Update Resource Cost Estimates		0.4	0.8	3.0
Validate with VCE		0.3	0.3	0.1
Resource Portfolio Construction	\$ 23,266	1.9	3.5	13.1
Configure Production Cost Model		0.6	1.3	5.0
Minimise Scenario Costs		1.0	2.0	8.0
Validate with VCE		0.3	0.3	0.1
Risk Analysis	\$ 6,078	1.3	0.8	1.6
Identify Key Risks		0.5	0.1	
Develop Risk Mitigations		0.5	0.4	1.5
Validate with VCE		0.3	0.3	0.1
Documentation	\$ 10,219	0.9	3.8	2.3
Draft Portfolio Study Report		0.8	3.0	1.5
Revise Portfolio Study Report		0.2	0.8	0.8
Total	\$ 62,984			
Total incl. 10% Discount	\$ 56,686			

Notes: PD = Project Director

(Ezra Beeman), TM = Task Manager (Miles Butler) and PA= Project Analyst (Maggie Riley)

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

Workplan and Schedule

Energeia’s proposed schedule is outlined below and reflects the tasks detailed above.

Table 2 - Itemized Project Schedule

Task / Sub-Task	Month					
	1	2	3	4	5	6
Project Management						
Kick-off	■					
Progress Updates	■	■	■	■	■	■
Weekly Project Controls	■	■	■	■	■	■
Scenario Development						
Develop Scenarios	■					
Validate with VCE	■					
Future Industry Trends						
Research Future Energy Trends	■					
Validate with VCE	■					
Load Profile Construction						
Review Load and BTM Resource Data		■				
Prepare 8760 and Statistical Inputs		■				
Resource Cost Estimation						
Update Resource Cost Estimates		■				
Validate with VCE		■				
Resource Portfolio Construction						
Configure Production Cost Model			■	■		
Minimise Scenario Costs			■	■		
Validate with VCE			■	■		
Risk Analysis						
Identify Key Risks				■	■	
Develop Risk Mitigations				■	■	
Validate with VCE				■	■	
Documentation						
Draft Portfolio Study Report					■	■
Revise Portfolio Study Report						■

EXHIBIT D

BUDGET, PAYMENT, RATES

Lump Sum Fee and Itemized Breakdown

Energeia's lump sum fee for the main offer is not to exceed \$56,686. This reflects a 10% discount off our standard rates to demonstrate our keen interest in working with Valley Clean Energy on this exciting project.

Schedule of Rates

The following Energeia staff rates would apply to requested out-of-scope work during this project only:

- Managing Director \$2,500/day
- Senior Analyst \$1,750/day
- Analyst \$1,500/day
- Senior Associate \$1,250/day
- Associate \$1,000/day

All out-of-scope work will be discussed with Valley Clean Energy and agreed in writing before commencement and will be charged on the basis of an hour or part thereof.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021- _____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE
APPROVING ENTERING INTO AN AGREEMENT FOR 100% CARBON NEUTRAL RESOURCE
PORTFOLIO BY 2030 STUDY SERVICES WITH ENERGEIA USA AND AUTHORIZING
INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO EXECUTE
AND SIGN THE AGREEMENT**

WHEREAS, in April 2021, a Request for Proposal (RFP) was released by Valley Clean Energy (VCE) seeking proposals to study and present options for achieving a 100% carbon neutral resource portfolio by 2030 in support of VCE’s strategic plan; and

WHEREAS, VCE staff reviewed and evaluated the RFP responses; and

WHEREAS, staff recommend that VCE enter into an agreement with Energeia USA to conduct studies and present options for achieving a 100% carbon neutral resource portfolio by 2030.

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

1. Authorize the Interim General Manager, in consultation with legal counsel, to execute a consulting services agreement with Energeia USA to study and present options for achieving a 100% carbon neutral resource portfolio as well as 100% carbon free resource portfolio (carbon free hour by hour) by 2030 for an amount not to exceed \$60,000 and to expire January 31, 2022.

ADOPTED, this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dan Carson, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Energeia USA Agreement

ATTACHMENT A

RENEWABLE PORTFOLIO STUDY SERVICES AGREEMENT WITH ENERGEIA USA

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Rebecca Boyles, Director of Customer Care and Marketing

SUBJECT: Update on the Net Energy Metering (NEM) 3.0 Proceeding

DATE: July 8, 2021

The purpose of this report is to provide an update on the California Public Utilities Commission (CPUC) proceeding on the Net Energy Metering (NEM) Successor Tariff, or NEM 3.0.

BACKGROUND

Net Energy Metering (NEM) is an electric utility tariff that allows customers with onsite electricity generation (usually solar) to get compensated at the retail rate via a bill credit on a month-to-month basis for exporting their excess generation to the grid. NEM began in 1995 in California and has been revised several times in response to impacts on the electric grid and electric rates for non-NEM customers. The timeline of the NEM 3.0 proceeding could experience delays, but a decision is expected by the end of 2021, with potential implementation in Q1 of 2022.

It is too soon to know what changes to expect under NEM 3.0, but the public conversation about the proceeding has been considerable among audiences that follow energy issues. The three investor-owned utilities (IOUs) have submitted proposals for NEM 3.0 that would significantly reduce the financial incentives for customers to go solar, while solar advocacy groups would like to see a more gradual step-down in incentives while encouraging battery storage. Groups such as The Utility Reform Network (TURN) support eliminating what the IOUs have identified as a cost-shift from NEM to non-NEM customers, but believe that the IOU proposals may go too far. Utilities and solar advocacy groups seem aligned on balancing the needs of low-income customers with the needs of the grid. There is also agreement that the next phase of NEM should encourage battery storage, electric vehicles and heating electrification.

Currently, most NEM customers are enrolled in what is called NEM 2.0, which came into effect in 2017, the principal differences between NEM 1.0 and NEM 2.0 being:

- NEM customers are required to be on Time-of-Use (TOU) rates, in which electricity is more expensive at times of the day when demand is higher; and

- NEM 2.0 customers are required to pay (not eligible for credit) non-bypassable charges, including the Wildfire Fund Charge, Competition Transition Charge, Nuclear Decommissioning and Public Purpose Program charges.

Under NEM 3.0, NEM 2.0 customers will be able to remain on their legacy rates (a term sometimes known as “grandfathering,” which should not be used¹). So, NEM 3.0 changes should only affect those customers that apply for interconnection agreements after the California Public Utilities Commission (CPUC) comes forward with a final decision on NEM 3.0.

Staff provided a definition and brief history of NEM and the transition from NEM 1.0 and 2.0 to 3.0 at the Community Advisory Committee meeting on June 24, 2021. Staff informed the committee that currently NEM 3.0 is being discussed at the California Public Utilities Commission (CPUC) with an anticipated decision from the CPUC by the end of 2021, and implementation of NEM 3.0 by early 2022. Staff provided key issues that are to be considered by the CPUC, potential cost shift from NEM to non-NEM customers, compensation for surplus generation, equitable access to low-income customers, how to avoid grid costs from NEM customers, GHG emissions reductions, contribution to renewable portfolio standard (RPS) goals and Transmission & Delivery efficiencies. It was suggested that VCE adopt a policy on NEM Customers with the above considerations in mind. Several Committee members asked Staff to look at other CCAs’ policies for their NEM customer base as part of the Staff analysis. Lastly, another consideration is the role of rooftop solar in reaching VCE’s goals and its effect on load and storage.

Additional Considerations

Staff believes that any CPUC modifications to NEM should be based on a full benefits/cost accounting approach. This should include assessment of the avoided cost values a NEM customer provides to the system such as GHG emission reductions, contributions to RPS goals, and transmission and distribution system efficiencies. Staff will be monitoring to see how the CPUC incorporates these principles into any decision, recognizing that the calculation of the cost to serve and benefits provided are complex and subject to interpretation.

NEXT STEPS

Staff will continue to monitor progress on the NEM 3.0 proceeding and report back in Q4 2021.

¹ Merriam-Webster defines “grandfathering” as “a clause creating an exemption based on circumstances previously existing especially : a provision in several southern state constitutions designed to enfranchise poor whites and disenfranchise Blacks by waiving high voting requirements for descendants of men voting before 1867” Source: <https://www.merriam-webster.com/dictionary/grandfather%20clause>