



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Zachary Struyk

SUBJECT: See Below

DATE: February 10, 2025

Approved

Date:

2/19/25

COUNCIL DISTRICT: Citywide

SUBJECT: Amended and Restated Storage Services Agreement with Yellow Pine Solar III for Battery Storage Facility

RECOMMENDATION

Adopt a resolution authorizing the Director of the Energy Department, the Acting Director of the Energy Department, or their designee to:

- (a) Negotiate and execute an amended and restated Storage Services agreement with Yellow Pine Solar III, LLC, a subsidiary of NextEra Energy Resources Development, LLC, to purchase resource adequacy and battery tolling rights associated with a battery storage facility for a maximum term of 23 years beginning 2027 through 2050, in an amount not to exceed \$3,756,000 annually and up to \$78,675,000 in aggregate; and
- (b) If appropriate, negotiate and execute a further agreement or amendment with Yellow Pine Solar III, LLC to increase the volume from the same battery storage facility without otherwise changing the material terms, in an amount not to exceed \$1,503,000 annually and up to \$31,482,000 in aggregate.

SUMMARY AND OUTCOME

Approval of the recommendation will authorize the Director of the Energy Department, the Acting Director of the Energy Department, or their designee to execute an amended and restated storage services agreement with NextEra Energy Resources Development, LLC's (NERD) Yellow Pine Solar III, LLC for a new battery storage project to serve customers of San José Clean Energy (SJCE), and to negotiate and execute a further agreement (or amendment) to increase the volume of the same facility.

The City currently has an agreement with NERD for use of the Yellow Pine III project for battery tolling¹, dated January 24, 2023. Because of third party delays to upgrade needed transmission facilities, NERD is unable to build the project pursuant to the timeline set forth in the original agreement. The City could terminate the agreement and have NERD pay damages. However, the delay is due to circumstances outside of NERD's control and the City is unlikely to be able to contract for another similar facility pursuant to better terms or that would allow SJCE to meet its regulatory compliance obligations in a timely manner. Thus, approving the recommendation to amend and restate the original agreement will contribute towards the Energy Department achieving California Public Utilities Commission (CPUC) resource adequacy and procurement requirements for SJCE. The amended and restated agreement revises the original agreement dated January 24, 2023, which had a maximum term of 20 years, beginning in 2025 through 2045. The amended and restated agreement also reduces the unit price, adjusts the resource adequacy online date, adds up to three years of battery tolling rights "Energy-Only" (at a further reduced unit price), and includes other considerations.

The authority sought in the recommendation section of this memorandum is for a larger volume of battery capacity than is currently available for sale. Additional volume from the project is expected to become available at a later date. If the resolution is approved, the City will amend and restate the agreement, maintaining the original volume. If the additional volume becomes available, the City will further amend the agreement to add volume or enter an agreement to buy the output from the additional volume pursuant to similar material terms without returning to City Council to seek additional authority. Due to various circumstances, the City and NERD cannot delay amending and restating at the original volume while they wait for the additional volume to become available.

Together, the above two recommended items shall not exceed \$5,259,000 annually and up to \$110,157,000 in the aggregate, to be paid solely from the SJCE Operating Fund and subject to the annual appropriation of funds.

Finally, the amended and restated agreement preserves the City's ability to buy resources identified as needed to achieve state and local climate goals in SJCE's 2022 Integrated Resource Plan.

¹ Battery tolling rights grant the City the authority to control when and how the resource charges and discharges energy. This allows the City to shift excess solar energy to times of peak demand.

BACKGROUND

On January 24, 2023, City Council authorized the Director of the Energy Department to negotiate and execute an agreement with Yellow Pine Solar III, LLC². The agreement was executed on January 24, 2023. On April 24, 2024, NERD informed the Energy Department of a delay to the ability of the Yellow Pine III project to come online and to provide resource adequacy. This is due to a delay in completion by third parties of an upstream transmission upgrade, the Lugo–Victorville 500 kilovolt Transmission Line Upgrade (L-V Upgrade), a project jointly owned and subject to completion by Southern California Edison and the Los Angeles Department of Water and Power. At the time the agreement was signed, the L-V Upgrade was expected to be completed in time for the project to be online by June 1, 2025. However, the upgrade, which is necessary for the Yellow Pine III project to be able to provide resource adequacy has been delayed to December 31, 2027.

CPUC Resource Adequacy Slice of Day Requirements

On July 15, 2021, the CPUC released Decision 21-07-014 on Phase 2 of the Resource Adequacy Reform Track. In this decision, the CPUC adopted a new regulatory framework for Resource Adequacy, a program to ensure there are sufficient power resources to reliably meet demand. The new regulatory framework requires load serving entities to show they have contracted with sufficient power resources to meet their demand every hour of the day on the peak day of each month. Since 2021, the CPUC has been refining the rules for this new structure.

In the new structure, batteries can be configured either as stand-alone or paired with a generating resource. In the case of batteries that are paired with a generating resource, the CPUC assumes that the generating resource will be able to charge the battery whenever charging is needed and hence the battery counts for resource adequacy. In the case of batteries that are not paired with a generating resource, the CPUC assumes that the battery will be available only if the load serving entity in question has enough generation capacity above its peak demand that can be delivered to charge the batteries, and resource adequacy is only available if this is the case. This makes stand-alone batteries valuable only if the load serving entity has excess supply that can be delivered for charging. Although the contract with Yellow Pine Solar III, LLC is for a battery without generation, the Yellow Pine III project can be charged using the generating resources from the Yellow Pine II project that the City already has under contract. Thus, the Yellow Pine III project will contribute to SJCE's resource adequacy requirements.

² <https://sanjose.legistar.com/View.ashx?M=F&ID=11578795&GUID=8F2D13FA-6833-4C06-9622-3D8398286F34>

CPUC Procurement Mandate and SJCE Integrated Resource Plan

On June 6, 2021, the CPUC released Decision 21-06-035 Requiring Procurement to Address Mid-term Reliability (2023-2026) due in part to the phased retirement of the Diablo Canyon Power Plant in 2024 and 2025 (CPUC Decision 21-06-035). This decision requires all load serving entities procure their proportional share of 11,500 megawatts of resource adequacy. The resources procured must be available during the month of September, the peak demand month in the state, pursuant to long-term agreements that come online over the period of calendar years 2023 through 2026. The CPUC assigned SJCE 247 megawatts of this procurement requirement. On February 2, 2023, the CPUC released Decision 23-02-040 that extended the deadline for part of this requirement to 2028. That decision also added to the procurement requirements in Decision 21-06-035, that all load serving entities must procure their proportional share of 4,000 megawatts of resource adequacy. The CPUC assigned SJCE 80 megawatts of this additional procurement requirement. The Yellow Pine III project will count towards SJCE's 2028 procurement requirement.

Solicitation

On February 17, 2022, the Energy Department issued a joint solicitation with East Bay Community Energy (now Ava Community Energy) seeking proposals for new clean resources including renewables and batteries with an emphasis on CPUC Decision 21-06-035 compliant projects. Nearly 30 entities submitted 44 bids in response to the solicitation. The Energy Department analyzed the offers considering factors such as value, technology, location, project risk, emissions mitigation, and counterparty experience. The Yellow Pine III project was selected under this solicitation.

Risk Oversight Committee Review

On December 5, 2024, the City Manager's Risk Oversight Committee recommended that the Energy Department submit to City Council for approval a resolution as described by the material terms of the recommendation section of this memorandum.

ANALYSIS

Need for the Amended and Restated Yellow Pine Solar III, LLC Agreement

Due to the delay of the L-V Upgrade, NERD is unable to bring the Yellow Pine III project online by the original target date of June 1, 2025. The Energy Department determined that the Yellow Pine III project remains a valuable and necessary project for both portfolio and compliance purposes, despite the delay. The Energy Department thus entered into negotiations to amend and restate the agreement.

The amended and restated agreement extends the commercial online date for resource adequacy in exchange for a unit price reduction, the addition of a low-cost battery tolling only period “Energy-Only” of up to three-years, enhanced development security, and other consideration. Once the L-V Upgrade is complete and the project is able to provide resource adequacy, the full agreement will begin and continue for a term of 20 years. The total term of the agreement shall not exceed 23 years. During negotiations on the amended and restated agreement, NERD informed the Energy Department that it may be able to add roughly 30% to the project volume but will not know whether it can do this for sure for several months. The additional volume would allow SJCE to fully comply with CPUC procurement requirements for 2028. The authority sought in this memorandum includes the ability to contract for the additional potential volume pursuant to similar material terms.

See **Attachment** – Summary of Material Terms for Amended and Restated Agreement with Yellow Pine Solar III, LLC.

Benefits of the Agreement

The agreement with Yellow Pine Solar III, LLC will allow the Energy Department to maintain a resource for SJCE that can be charged reliably with the output of the Yellow Pine II project and hence be used to meet CPUC resource adequacy requirements and procurement mandates outlined in CPUC Decisions 21-06-035 and 23-02-040. Also, if NERD is able to provide additional volume, the added volume will help SJCE meet its 2028 obligation under CPUC Decision 23-02-040.

Project Developer

NextEra’s subsidiary Yellow Pine Solar III, LLC, is building a new utility-scale four-hour electric battery storage project in Clark County, Nevada. Although located in Nevada, this resource will be delivered within the California Independent System Operator boundary and will not be considered an import.

Yellow Pine Solar III, LLC is a subsidiary of NERD. NERD is not a publicly traded company, but its indirect corporate parent, NextEra Energy, Inc. (NYSE: NEE) is a publicly traded company. NextEra Energy, Inc. is the world’s largest generator of renewable energy from the wind and sun. It owns and operates over 25 gigawatts of projects.

Project Terms

Estimated maximum annual cost: \$5,259,000

Estimated maximum total contract cost: up to \$110,157,000

Term: up to 23 years

Expected commercial online date:

- Energy-Only Toll: 6/1/27 (up to 3 years)
- Full Toll with Resource Adequacy: 6/1/28 (20 years)

Interconnection Risk

The L-V Upgrade was originally approved by the California Independent System Operator) Board of Governors in 2016 with an estimated in-service date of December 31, 2018. Since then, the project has experienced several delays and is currently expected to be completed by May 31, 2027. Until the L-V Upgrade is complete, the Yellow Pine III project will not be able to provide resource adequacy. The L-V Upgrade is affecting an estimated 12 other projects in the region. NERD and the Energy Department have alerted policy makers of the importance of timely completion for the L-V Upgrade for grid reliability, including the Governor's Office, the California Independent System Operator, and the CPUC. NERD, the Energy Department, and other stakeholders will continue to advocate to avoid further delays.

In the event of further delays, the amendment provides the Energy Department the right (but not obligation) to extend the battery tolling "Energy-Only" portion of the agreement on an annual basis twice, for a total possible energy-only period of up-to three years.

Labor, Environment, and Equity

The Energy Department intends to finalize power workforce and environmental stewardship project selection criteria in 2025. In advance of finalizing such criteria, the Energy Department reports that:

- The project is expected to be built using union labor via a project labor agreement; and
- The project obtained a land use permit to construct and operate the Yellow Pine III project from the federal Bureau of Land Management after a full review under the National Environmental Permitting Act.

Under the contemplated project selection criteria (still being drafted and reviewed) the Yellow Pine III project would be expected to score well in these important categories given that it expects to use union labor and implement environmental mitigations under its land use permit.

Energy Storage Safety

The catastrophic incident on January 16, 2025, at the Moss Landing Energy Storage facility has led to widespread scrutiny of lithium chemical battery technology, configuration, and safety standards. The Moss Landing Energy Storage facility was one of the first utility-scale battery storage facilities to come online in 2020. It was built to code at that time.

Energy storage facilities play an important role in the transition to a carbon-free grid. However, it is important they utilize modern technologies and designs to help ensure reliable and safe operations. For example, current safety standards include modular fire prevention systems to prevent the spread of fire between units, fire-resistant barriers (or spacing between units) to limit thermal runaway, requirements for modern ventilation and cooling systems, and testing protocols to ensure containment of thermal runaway events. These standards are in addition to more traditional 24/7 monitoring, remote shut-down capabilities, detection systems, and first-responder orientation.

Prior to commercial operations, the Yellow Pine III project will be required to demonstrate compliance with safety standards established by local, state, and federal agencies and pass operational tests based on manufacturer operating specifications.

All long-term agreements in the City's portfolio are product offtake structures where the project developer is responsible for procuring, designing, constructing, and operating the facility per the codes required by the lead agency and other authorities specific to the project location. The City performs due diligence to confirm the facility has received all permits, authorizations, and approvals required to operate the facility before the project can achieve commercial operations. Additionally, prior to commercial operations, the City requires each storage facility to pass a series of operational tests that demonstrate compliance with the agreement and manufacturer operating specifications. These steps help ensure facilities are compliant with lead agency standards and demonstrate physical operating capabilities.

Energy Department staff will continue to monitor the battery safety proceedings and analysis related to the Moss Landing incident.

Climate Smart San José Analysis

Proceeding with the amendment and restatement of the agreement with Yellow Pine Solar III, LLC, and contracting for additional volume if it becomes available, promotes San José's ability to provide power to SJCE customers at a reasonable price.

EVALUATION AND FOLLOW-UP

No additional follow-up is expected at this time.

COST SUMMARY/IMPLICATIONS

Entering into the amended and restated agreement with Yellow Pine Solar III, LLC and adding volume would increase the cost, as shown in the table below.

Agreement	Max Annual	Max Lifetime
Current	\$3,870,000	\$77,400,000
Amended and restated, current volume	\$3,756,000	\$78,675,000
Amended and restated, higher volume	\$5,259,000	\$110,157,000

While there is a reduction to the unit price, the potential increase in volume and the additional “Energy-Only” years (up-to three) lead to an overall cost increase.

Funding for the agreement in the San José Clean Energy Fund (Fund 501) will be brought forward as part of future budget processes beginning with the development of the 2026-2027 Proposed Operating Budget and is subject to City Council-approved appropriation of funds. The Energy Department recommends SJCE customer rates to City Council on an annual basis sufficient to meet the Energy Department’s costs, including power costs, considering all its agreements.

COORDINATION

This memorandum has been coordinated with the City Attorney’s Office and the City Manager’s Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the March 4, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Zachary Struyk

Acting Director of Energy Department

For questions, please contact Paul Innamorato, Deputy Director of Power Resources, at Paul.Innamorato@sanjoseca.gov or 408-535-4891.

ATTACHMENT - Summary of Material Terms for Amended and Restated Agreement with Yellow Pine Solar III, LLC

ATTACHMENT

Summary of Material Terms for Amended and Restated Agreement with Yellow Pine Solar III, LLC

Buyer: The City of San José, a California municipal corporation, operating San José Clean Energy

Seller: Yellow Pine Solar III, LLC, a Delaware limited liability company.

Product: Capacity attributes (as defined under the agreement), which includes resource adequacy and battery tolling rights. The amended and restated agreement adds an energy-only preliminary period of up to three years that does not include resource adequacy.

Facility: Seller will develop, design, permit, construct, own and operate the facility (Facility), which is a battery energy storage system located in Clark County, Nevada.

CAISO Scheduling Coordinator: SJCE will be the CAISO Scheduling Coordinator for the Facility.

Delivery Term: Original agreement was for 20 years. The amended and restated agreement includes a twenty-year term once Yellow Pine III can provide resource adequacy, and a preliminary period of up-to-three years during which Yellow Pine III will provide energy only tolling without resource adequacy.

Pricing: Increases from \$3,870,000 to \$5,259,000 annually and from \$77,400,000 to \$110,157,000 over the life of the agreement, including a further amendment or agreement for additional volume. While there is a reduction to the unit price, an overall cost increase results from a possible addition of volume, and up to three additional years providing energy only.

Expected Commercial Operation Date:

- Energy-Only toll: 6/1/27 (previously 6/1/25)
- Full toll with resource adequacy: 6/1/28 (previously 6/1/25)

Development Security: The amount of the security depends on the volume and pricing, which is commercially sensitive information. The amended and restated agreement increases the Development Security.

Performance Security: The amount of the security depends on the volume and pricing, which is commercially sensitive information. The amount of the Performance Security will increase if the volume increases.

Events of Default and Termination Rights

- Includes customary events of default and termination.
- Seller has the right to terminate prior to the construction start date subject to the payment of a limited termination payment. That payment is tiered off the Development Security (commercially sensitive information). Since the Development Security is increasing, the termination payment is increasing.

Environmental Attributes: No Portfolio Content Category 1 renewable energy certificates provided since this is a resource adequacy and energy tolling agreement with no renewable generation.

Insurance: Consistent with the requirements approved by Risk Management.

Designated Fund and Appropriation of Funds: The agreement will include provisions that will limit the City's liability to the San José Clean Energy Operating Fund (Designated Fund). This fund is used solely for the City's costs and expenses associated with operating San José Clean Energy. The agreement will provide that payment obligations are special limited obligations of the City payable solely from the Designated Fund, and that those obligations shall not be a charge upon the revenues or General Fund of the City of San José or upon any non-San José Clean Energy moneys or other property of the Energy Department or the City of San José. The agreement will also not financially bind future governing bodies and will not constitute an obligation of future legislative bodies of the City to appropriate funds.

Prevailing Wage: To the extent applicable to the construction of the Facility, Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any. Buyer agrees that Seller's obligations under this Section 13.5 will be satisfied upon the execution of a project labor agreement related to construction of the Facility. Seller or its construction contractor for the Facility shall either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility, or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity's existing labor agreements, in either case, no later than the date that is six (6) months prior to the Construction Start Date.