



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lori Mitchell

**SUBJECT:** SEE BELOW

**DATE:** January 5, 2023

Approved

Date

1/12/23

**SUBJECT: LONG TERM RENEWABLE ENERGY AND RESOURCE ADEQUACY  
CONTRACTS**

## **RECOMMENDATION**

Adopt a resolution authorizing the Director of the Community Energy Department or the Director's designee to negotiate and execute:

- (a) An agreement with Yellow Pine Solar II, LLC, a subsidiary of NextEra Energy Resources Development, LLC, to buy renewable energy, renewable energy credits, resource adequacy, battery tolling rights, and attributes associated with a solar photovoltaic and battery storage facility for a term of no more than 25 years beginning 2024 through 2049, in an amount not to exceed \$15,400,000 annually and \$332,000,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds;
- (b) An agreement with Yellow Pine Solar III, LLC, a subsidiary of NextEra Energy Resources Development, LLC, to buy resource adequacy and battery tolling rights associated with a battery storage facility for a term of 20 years beginning 2025 through 2045, in an amount not to exceed \$3,870,000 annually and \$77,400,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds;
- (c) An agreement with Sun Pond, LLC, a subsidiary of Longroad Development Company, LLC, to buy renewable energy, renewable energy credits, resource adequacy, battery tolling rights, and attributes associated with a solar photovoltaic and battery storage facility for a term of 20 years beginning 2025 through 2045, in an amount not to exceed \$11,260,000 annually and \$225,200,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds; and
- (d) An agreement with Alpaugh BESS, LLC, a subsidiary of Con Edison Clean Energy Businesses, Inc., to buy resource adequacy associated with a battery storage facility for a term of 12 years beginning 2024 through 2036, in an amount not to exceed \$450,000 annually and \$5,400,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds.

## **OUTCOME**

This memorandum requests authority to negotiate and execute two long-term agreements for new solar plus battery storage projects and two long-term agreements for new battery storage only projects to come on-line between January 2024 and December 2025 and serve customers of San José Clean Energy (SJCE). Approving the recommendation to negotiate and execute the agreements will contribute towards the Community Energy Department (Department) achieving California Public Utilities Commission (CPUC) procurement requirements in calendar years 2024 through 2049 for SJCE. The agreements will also add resources identified as needed to achieve State and local climate goals in SJCE's 2022 Integrated Resource Plan.

## **BACKGROUND**

### *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 to procure their proportional share of 11,500 megawatts of resource adequacy (RA) that can be available during the month of September, the highest energy use month in the State, via long-term agreements that come online over the period of calendar years 2023 through 2026. The CPUC assigned SJCE 247 megawatts of this additional RA procurement requirement. More detail on SJCE's procurement requirements can be found in Attachment A – Additional Background.

On October 25, 2022, the City Council approved SJCE's 2022 Integrated Resource Plan, which incorporates the requirements of the CPUC Decision 21-06-035 and identifies a need for further additional resources to achieve State emission reduction requirements and the City's objective to be climate neutral by 2030.

### *Solicitations*

On February 17, 2022, the Department issued a joint solicitation with East Bay Community Energy seeking proposals for new clean resources including renewables and batteries with heavy emphasis on procuring CPUC Decision 21-06-035 compliant projects. Nearly 30 entities submitted 44 bids in response to the solicitation. The Department analyzed the offers, considering factors such as value, technology, location, project risk, emissions mitigation, and counterparty experience. The projects included in the recommendation of this memorandum were shortlisted.

### *Risk Oversight Committee Review*

On January 5, 2023, the City Manager's Risk Oversight Committee recommended that the City Council authorize the Director or the Director's designee to negotiate and execute the agreements referenced in the recommendation section of this memorandum. More detail on the Risk Oversight Committee can be found in Attachment A – Additional Background.

## **ANALYSIS**

### *Benefits of the Agreements*

The solar plus storage agreements with Yellow Pine Solar II, LLC and Sun Pond, LLC will contribute towards SJCE's ability to meet the requirements of Decision 21-06-035 and provide SJCE renewable energy, RA, and dispatchable batteries. The storage tolling agreement with Yellow Pine Solar III, LLC will contribute towards SJCE's ability to meet the requirements of Decision 21-06-035 and provide RA and dispatchable batteries. The RA-only agreement with Alpaugh BESS, LLC will contribute towards SJCE's ability to meet the requirements of Decision 21-06-035 by providing RA. All four agreements allow the Department to make progress towards the aggressive goals of SJCE's 2022 Integrated Resource Plan.

### *Yellow Pine Solar II, LLC Project*

Yellow Pine Solar II, LLC is a new utility-scale solar photovoltaic facility with a four-hour electric battery storage project under development in Clark County, Nevada, with an expected commercial operation date of June 1, 2024 for the battery storage and December 1, 2024 for the solar. 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 II, LLC is a subsidiary of NextEra Energy Resources Development, LLC (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.

A summary of material terms both confirmed and pending negotiation is in Attachment B. Project Terms:

- Maximum annual cost: \$15,400,000;
- Maximum total contract cost: \$332,000,000<sup>1</sup>
- Term for the solar component: 20 years
- Max term for the battery storage component: 25 years
- Online date, storage: June 1, 2024
- Online date, solar: December 1, 2024

### *Yellow Pine Solar III, LLC Project*

NERD's subsidiary, Yellow Pine Solar III, LLC, is a new utility-scale four-hour electric battery storage project under development in Clark County, Nevada. NERD is not a publicly traded company, but its indirect corporate parent, NextEra Energy, Inc. (NYSE: NEE) is a publicly traded company. A summary of material terms both confirmed and pending negotiation is in

---

<sup>1</sup> The expected commercial operation dates for the two components of the project (battery storage and solar) differ. The commercial operation date of the solar component is expected to occur six months after the commercial operation date of the battery storage. The term for the solar component will be no longer than 20 years. The term for the battery storage component will end at the conclusion of the term for the solar component. The total agreement term will be capped at no more than 25 years.

Attachment C.

Project Terms:

- Maximum annual cost: \$3,870,000
- Maximum total contract cost: \$77,400,000
- Term: 20 years
- Online date: June 1, 2025

*Sun Pond, LLC Project*

Longroad Development Company, LLC's, subsidiary, Sun Pond, LLC, is a new utility-scale solar photovoltaic facility with a four-hour electric battery storage project in Maricopa County, Arizona. Longroad Development Company was founded in 2016 and focuses primarily on the development and operation of utility-scale wind, solar, and battery energy storage projects throughout the United States. It has successfully brought 1.9 gigawatts of solar projects online in recent years. Longroad Development Company is not a publicly traded company. A summary of material terms both confirmed and pending negotiation is in Attachment D.

Project Terms:

- Maximum annual cost: \$11,260,000
- Maximum total contract cost: \$225,200,000
- Term: 20 years
- Online date: April 1, 2025

*Alpaugh BESS, LLC Project*

Con Edison Clean Energy Businesses, Inc.'s subsidiary, Alpaugh BESS, LLC, is developing a utility-scale four-hour electric battery storage project in Tulare County, CA. Con Edison Clean Energy Businesses, Inc. is a leader in the energy industry as the second largest solar energy owner and operator in North America. It develops, owns, and operates more than four gigawatts of renewable energy projects, and delivers a wide range of energy-related products and services. Con Edison Clean Energy Businesses, Inc. is not a publicly traded company but its indirect parent, Consolidated Edison, Inc., is a publicly traded company (NYSE: ED). See Attachment E for a summary of material terms for this agreement.

Project Terms:

- Maximum annual cost: \$450,000
- Maximum total contract cost: \$5,400,000
- Term: 12 years
- Online date: June 1, 2024

**CONCLUSION**

The Department recommends the City Council adopt the resolutions in the recommendation authorizing the Director or the Director's designee to negotiate and execute the agreements listed in the recommendation for the reasons stated above.

## **POLICY ALTERNATIVES**

**Alternative #1:** Do not negotiate and execute the agreements summarized in the recommendation. Attempt to close remaining unfilled resource additions for 2024 and 2025 required by Decision 21-06-035 through future solicitations and other authorized means.

**Pros:** Procuring these resources through a future solicitation may provide cost reductions or better terms.

**Cons:** These projects must be completed by calendar years 2024 and 2025 and in the short-term, ongoing supply chain disruptions, inflation, and increased demand for these projects will likely increase costs and limit supply options. The Department must secure sufficient additional resources with calendar years 2024 and 2025 in-service dates to meet the requirements in CPUC Decision 21-06-035 and to make progress towards adding resources identified as necessary in SJCE's 2022 Integrated Resource Plan. A failure to approve the recommendation set forth in this memorandum would delay the addition of required resources and will likely increase the cost of adding needed resources.

**Reason for not recommending:** Deciding not to approve the recommendation set forth in this memorandum contradicts the Department's effort to ensure SJCE remains on track with its regulatory compliance mandates related to Decision 21-06-035 and the RA, and with its 2022 Integrated Resource Plan to achieve the City's climate goals. If SJCE fails to comply with such regulatory mandates, SJCE would be at risk for penalties from the CPUC.

## **EVALUATION AND FOLLOW-UP**

No additional follow-up is expected at this time.

## **COST SUMMARY/IMPLICATIONS**

Entering into the new agreement with Yellow Pine Solar II, LLC would cost up to \$15,400,000 annually, beginning in 2024 (fiscal year 2024-2025), and \$332,000,000 over the lifetime of the agreement. Entering into the new agreement with Yellow Pine Solar III, LLC would cost up to \$3,870,000 annually, beginning in 2025 (fiscal year 2025-2026), and \$77,400,000 over the term of the agreement. Entering into the new agreement with Sun Pond, LLC would cost up to \$11,260,000 annually, beginning in 2025 (fiscal year 2024-2025), and \$225,200,000 over the lifetime of the agreement. Entering into the new agreement with Alpaugh BESS, LLC would cost up to \$450,000 annually, beginning in 2024 (fiscal year 2024-2025), and \$5,400,000 over the lifetime of the agreement.

Funding for the long-term renewable energy and resource adequacy agreements will be subject to City Council-approved appropriation of funds in the SJCE Operating Fund each fiscal year. The Department recommends to City Council SJCE customer rates on an annual basis sufficient to meet the Department's costs including power costs considering all its agreements. In addition, the Department will bring forward funding recommendations sufficient to support the anticipated annual costs of the agreements as part of the budget planning process for future fiscal years.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City’s website for the January 24, 2023 City Council meeting.

## **COORDINATION**

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

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

## **CEQA**

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

/s/

LORI MITCHELL

Director, Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy Department, at (408) 535-4880.

## **ATTACHMENTS**

Attachment A – Additional Background

Attachment B – Summary of Material Terms for the Yellow Pine Solar II, LLC Project

Attachment C – Summary of Material Terms for the Yellow Pine Solar III, LLC Project

Attachment D – Summary of Material Terms for the Sun Pond, LLC Project

Attachment E – Summary of Material Terms for the Alpaugh BESS, LLC Project

## ATTACHMENT A – ADDITIONAL BACKGROUND

### *Risk Oversight Committee*

On May 1, 2018, the City Council approved the Energy Risk Management Policy submitted by the Community Energy Department director (Director) in accordance with Section 26.50.050 of the San José Municipal Code. Pursuant to the Energy Risk Management Policy, the City Manager appoints members to the City Manager's Risk Oversight Committee (Risk Oversight Committee) to oversee SJCE's risk management programs and provide advice to the City Manager on risk management program matters. The Risk Oversight Committee approves and amends San José Clean Energy's (SJCE) Risk Management Regulations. The current version was approved on February 28, 2022.

### *California Public Utilities Commission (CPUC) Procurement Mandate*

In Decision 21-06-035, the CPUC mandates that all load serving entities (e.g., investor-owned utilities and community choice aggregators) procure a significant amount of additional net qualifying capacity. Net qualifying capacity represents the amount of power a power plant or battery storage facility can generate during the month of September, the highest energy use month in the state. Load serving entities must meet this new requirement by building projects or executing long-term power purchase agreements with projects that come online during the period between 2023 and 2026.<sup>1</sup> This procurement requirement was intended to replace the capacity and greenhouse-gas-free energy the state's electric system expected to lose from the phased retirement of the nuclear Diablo Canyon Power Plant<sup>2</sup>.

In accordance with Decision 21-06-035, CPUC assigned to SJCE a 247 megawatt (MW) procurement requirement, as follows:

- 2023: 43 MW. SJCE expects to comply with its Clines Corners Wind Farm LLC agreement executed on August 31, 2020, pursuant to authority granted to the Director by City Council in 2019 and increased in 2020.
- 2024: 129 MW. SJCE seeks to comply with agreements currently under negotiation, the Yellow Pine Solar II, LLC and Alpaugh BESS, LLC agreements proposed in this memorandum, and, if necessary, additional solicitations. If the City Council approves the agreements recommended in this memorandum, the City Council will have approved agreements for 157 MWs to be added in 2024 but to date none of the agreements have been finalized and executed, and over half of this amount is at risk of not being completed.
- 2025: 32 MW. SJCE seeks to comply with agreements currently under negotiation, the Yellow Pine Solar III, LLC and Sun Pond, LLC agreements proposed in this memorandum and, if necessary, additional solicitations. If the City Council approves the agreements recommended in this memorandum, the City Council will have approved

---

<sup>1</sup> CPUC Decision 21-06-035 <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K155/389155856.PDF>

<sup>2</sup> On September 1, 2022, state lawmakers voted to keep the Diablo Canyon Power Plant open. Department staff does not expect CPUC to adjust, reduce, or eliminate the requirements of Decision 21-06-035, even if Diablo Canyon Power Plant continues to operate.

agreements for 113 MWs to be added in 2025 but negotiations for one of the agreements approved has already been discontinued and to date none of the agreements approved have been finalized and executed.

- 2026: 21.5 MW of long-duration storage (projects that can store energy for a period of eight hours or longer). SJCE expects to comply with the Tumbleweed Energy Storage, LLC (executed January 24, 2022) and Goal Line BESS 1, LLC (executed March 1, 2022) projects negotiated through the joint powers authority, California Community Power. These contracts have been previously approved by the City Council.
- 2026: 21.5 MW of firm, clean resources (projects that deliver firm power and have no on-site emissions). SJCE expects to comply with the ORGP LLC portfolio of projects (executed May 31, 2022), and the Fish Lake Geothermal LLC project (executed May 31, 2022) negotiated through the joint powers authority, California Community Power. These contracts have been previously approved by the City Council. Staff may identify additional resources through future solicitations.

#### *Resource Adequacy*

State and federal laws require load serving entities, such as community choice aggregators like SJCE, to contract with power plants to be available to meet load through the Resource Adequacy program. The CPUC requires SJCE to procure specified amounts of resource adequacy on annual and monthly bases, and CPUC imposes significant penalties for failing to meet such requirements.



## **Attachment B - Summary of Material Terms for the Yellow Pine Solar II, LLC Project**

### **Overview of Proposed Agreement**

**Buyer:** The City of San José.

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

**Product:** Renewable energy, capacity attributes (as defined under the agreement), which includes resource adequacy, green attributes (renewable energy certificates), the right to dispatch the battery and ancillary services.

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

**CAISO Scheduling Coordinator:** Buyer will be the CAISO Scheduling Coordinator for the facility.

**Delivery Term:** The delivery term for the solar component is 20 years; the delivery term for the battery component is from the commercial operation date to the end of the term for the solar component but no longer than 25 years.

**Pricing:** \$15,400,000 Maximum Annual Cost, \$332,000,000 Maximum Total Cost.

### **Commercial Operation Date; Delay Damages**

Guaranteed Commercial Operation Date is June 1, 2024 for the battery component and December 1, 2024 for the solar component. Delay Damages under negotiation.

### **Development Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Performance Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Events of Default and Termination Rights**

Under negotiation.

### **Environmental Attributes**

Portfolio Content Category 1 renewable energy certificates are included.

### **Insurance**

To reflect 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 agreements 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 Community 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.

## **Attachment C - Summary of Material Terms for the Yellow Pine Solar III, LLC Project**

### **Overview of Proposed Agreement**

**Buyer:** The City of San José.

**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.

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

**CAISO Scheduling Coordinator:** Buyer will be the CAISO Scheduling Coordinator for the facility.

**Delivery Term:** The delivery term is 20 years.

**Pricing:** \$3,870,000 Maximum Annual Cost, \$77,400,000 Maximum Total Cost.

### **Commercial Operation Date; Delay Damages**

The Guaranteed Commercial Operation Date is June 1, 2025. Delay Damages under negotiation.

### **Development Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Performance Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Events of Default and Termination Rights**

Under negotiation.

### **Environmental Attributes**

No Portfolio Content Category 1 renewable energy certificates provided since this is a resource adequacy and energy tolling only agreement.

### **Insurance**

To reflect 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 agreements 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 Community 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.

## **Attachment D - Summary of Material Terms for the Sun Pond, LLC Project**

### **Overview of Proposed Agreement**

**Buyer:** The City of San José.

**Seller:** Sun Pond, LLC, a Delaware limited liability company.

**Product:** Renewable energy, capacity attributes (as defined under the agreement), which includes resource adequacy, battery tolling rights, green attributes (renewable energy certificates), and ancillary services.

**Facility:** Seller will develop, design, permit, construct, own and operate the facility, which is a solar photovoltaic and battery energy storage system located in Maricopa County, Arizona.

**CAISO Scheduling Coordinator:** Buyer will be the CAISO Scheduling Coordinator for the facility.

**Delivery Term:** The delivery term is 20 years.

**Pricing:** \$11,260,000 Maximum Annual Cost, \$225,200,000 Maximum Total Cost.

### **Commercial Operation Date; Delay Damages**

Guaranteed Commercial Operation Date is April 1, 2025. Delay Damages under negotiation.

### **Development Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Performance Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Events of Default and Termination Rights**

Under negotiation.

### **Environmental Attributes**

Portfolio Content Category 1 renewable energy certificates are included.

### **Insurance**

To reflect 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 agreements 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 Community 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.

## **Attachment E - Summary of Material Terms for the Alpaugh BESS, LLC Project**

### **Overview of Proposed Agreement**

**Buyer:** The City of San José.

**Seller:** Alpaugh BESS, LLC, a Delaware limited liability company.

**Product:** Capacity Attributes (as defined under the agreement), which includes resource adequacy.

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

**CAISO Scheduling Coordinator:** Seller will be the CAISO Scheduling Coordinator for the facility.

**Delivery Term:** The delivery term is 12 years.

**Pricing:** \$450,000 Maximum Annual Cost, \$5,400,000 Maximum Total Cost.

### **Commercial Operation Date; Delay Damages**

Guaranteed Commercial Operation Date is June 1, 2024. Delay Damages under negotiation.

### **Development Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Performance Security**

The amount of the security depends on the pricing, which is commercially sensitive information.

### **Events of Default and Termination Rights**

Under negotiation.

### **Environmental Attributes**

No Portfolio Content Category 1 renewable energy certificates provided since this is a resource adequacy-only agreement.

### **Insurance**

To reflect 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 agreements 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 Community 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.