



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

SUBJECT: SEE BELOW

DATE: March 19, 2020

Approved

Date

3/27/20

SUBJECT: POWER PROCUREMENT, ACCEPTANCE OF CARBON-FREE ALLOCATIONS, AND INTEGRATED RESOURCE PLAN TIME CHANGE

RECOMMENDATION

Adopt a resolution:

- (a) Increasing the authority granted to the Director of Community Energy or her designee for the procurement of power supply products, other than Resource Adequacy products, by \$393,300,000, from \$690,000,000 to an amount not to exceed \$1,083,300,000 in aggregate, in Calendar Years 2020 through 2026; subject to the Energy Risk Management Policy, the appropriation of funds, and Risk Oversight Committee approval of all contracts with a duration of ten years or more;
- (b) Increasing the authority granted to the Director of Community Energy or her designee for the procurement of Resource Adequacy products by \$76,200,000 from \$461,800,000 to \$538,000,000 in aggregate in calendar years 2021 through 2043; subject to the Energy Risk Management Policy, the appropriation of funds, and Risk Oversight Committee approval of all contracts with a duration of ten years or more;
- (c) Approving the acceptance of low carbon power products from Pacific Gas & Electric's hydroelectric and nuclear generating plants; and
- (d) Amending Subsection B of Resolution No. 78711 to modify the timing for the Community Energy Department to present San José Clean Energy's Integrated Resource Plan for City Council approval prior to submitting the Integrated Resource Plan to the California Public Utilities Commission.

OUTCOME

Approving the recommended procurement authority will enable San José Clean Energy ("SJCE") to procure power, Renewable Portfolio Standard ("RPS") resources, and low carbon resources needed to meet: (1) SJCE's entire anticipated power needs in 2020 and 2021; (2) 80

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percent of SJCE's anticipated power needs in 2022 and 2023; and (3) 30 percent of SJCE's anticipated power needs in 2024 through 2026. Approving the recommendation for additional authority to procure Resource Adequacy ("RA") will enable SJCE to meet regulatory requirements for standard and incremental RA. These recommendations are consistent with SJCE's Risk Management Policy and Regulations.

Approving the acceptance of low-carbon power products from Pacific Gas & Electric's ("PG&E") hydroelectric and nuclear generating plants will save SJCE ratepayers tens of millions of dollars and will not increase nuclear output or extend the life of related nuclear facilities.

Modifying Resolution No. 78711 to allow the Community Energy Department ("CED") to submit SJCE's Integrated Resource Plan ("IRP") for City Council approval prior to submitting the IRP to the California Public Utilities Commission ("CPUC"), rather than in March 2020 (as required in Resolution No. 78711), will allow SJCE to align its IRP work with the CPUC's schedule and include necessary planning inputs that will not be available by the March deadline.

BACKGROUND

Section 26.50.020 of the Municipal Code states that the City may enter contracts to procure power products for a term up to twenty-five (25) years. Section 26.50.050 of the Municipal Code requires the Director of Community Energy ("Director") to submit a Risk Management Policy to City Council. On May 1, 2018, the City Council approved the Energy Risk Management Policy and associated Energy Risk Management Regulations.

The Energy Risk Management Policy created a Risk Oversight Committee ("ROC") responsible for overseeing compliance with the policy. The Energy Risk Management Policy and associated Energy Risk Management Regulations set forth a risk control structure and procurement requirements that apply to SJCE procurement activities and establish requirements for the competitive procurement of power products. The ROC has been in operation since mid-2018.

On June 4, 2019, City Council adopted a resolution granting the Director authority to procure power supply products in an amount not to exceed, \$245,000,000 for calendar year ("CY") 2019; \$302,000,000 for CY 2020; \$213,000,000 for CY 2021; and \$135,000,000 for CY 2022. City Council also authorized the Director to procure resource adequacy products, including battery storage, in an amount not to exceed \$451,800,000 over twenty years.

Finally, City Council authorized the Director to negotiate and execute long-term Power Purchase Agreement ("PPAs") for new renewable projects in an amount not to exceed \$50,000,000 annually and \$1,080,000,000 in aggregate from 2020 through 2042.

ANALYSIS

Power Supply Procurement Authority

These recommendations will allow CED to continue to build a power supply portfolio that includes a mix of short, medium, and long-term contracts for a variety of different products. These products comprise energy, renewable attributes, low-carbon attributes, and resource adequacy. It is good utility practice to build a diversified portfolio that includes contracts with different durations to reduce operational costs and protect ratepayers against price fluctuations.

Forward energy prices can be volatile and increase and decrease by more than 20 percent per year due to market forces. This volatility makes any load serving entity (“LSE”) vulnerable to unforeseen price increases until it enters into fixed price power supply contracts. Figure 1 shows SJCE’s expected power supply costs, the total previously approved authority, the amounts already committed, and the requested authority in this memorandum.

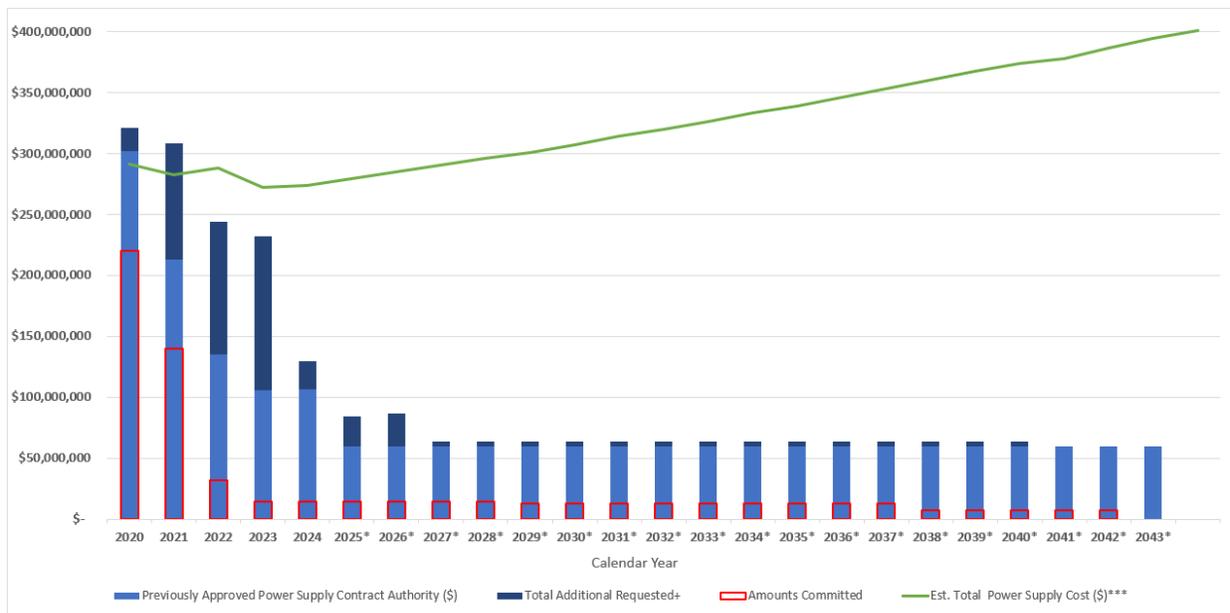


Figure 1 – Summary of Existing and Requested Authority

*This period extends beyond SJCE’s detailed pro-forma model. Accordingly, these numbers are early-stage estimates of the annual costs each of these years.

SJCE procures power products in compliance the Energy Risk Management Regulations. The Risk Management Regulations, as recently updated by the ROC, include the following forward procurement guidelines shown in Table 1:

Table 1 Coverage Thresholds

	Minimum Coverage	Maximum Coverage
Rolling One Year Forward	65-80%	115% ¹
Rolling Two and Three Years Forward	30%	80%
Rolling Four Years forward and beyond	0%	70%

At the beginning of each year, SJCE will assess the additional authority needed to remain in compliance with the Risk Management Regulation Coverage Thresholds. Over the course of the year, SJCE will regularly review its existing authority and the procurement that has been completed. SJCE plans to come back to City Council annually to request additional authority while leaving some of the position open to prudently manage SJCE’s risk. SJCE will present its additional procurement authorization recommendations to the ROC for their input and approval. SJCE will then submit the approved recommendations to Council.

SJCE procurement will be in accordance with all Risk Management Regulation requirements including transacting with authorized counterparties, within pre-authorized credit and concentration limits, and using authorized Edison Electric Institute (“EEI”) and Western System Power Pool (“WSPP”) agreements.²

Short-Term Power Supply Recommendations (Excluding RA)

SJCE recommends procuring up to 115% of our expected non-RA power costs for calendar years 2020 and 2021 for a total authority of \$517,600,000. This is an increase of \$107,600,000 from the previously authorized \$410,000,000³ for this period. ***It is important to note that SJCE does not plan to procure for more power than it needs; however, SJCE needs the authority to buy additional power in the event usage increases due to weather or other factors.***

SJCE recommends procuring up to 80% of our expected non-RA power costs for calendar years 2022 and 2023 for a total authority of \$351,800,000. This is an increase of \$221,800,000 from the previously authorized \$130,000,000⁴ for this period.

¹ The Risk Management Regulations permit SJCE to buy up to 115% of the energy supply needed to meet its expected load to mitigate the risk of expensive procurement in the spot market during high cost periods resulting from unpredictable load increases. For example, load increases materially when the temperature increases; therefore SJCE needs authority to procure power in meet unexpected load increases.

² See Attachment 1 for key terms in the EEI and WSPP agreements.

³ This includes \$30,000,000 for 2021 for long-term renewable contracts.

⁴ This includes \$50,000,000 per year for long-term renewable contracts.

Medium-Term Power Supply Recommendations (Excluding RA)

SJCE recommends procuring up to 30% of our expected non-RA power costs for calendar years 2024 through 2026 for a total authority of \$213,900,000. This is an increase of \$63,900,000 from the previously authorized \$150,000,000⁵ for this period. SJCE currently has not executed any medium-term contracts as it was focused on startup operations in the first year. Now that SJCE has successfully operated for a full year, SJCE recommends entering some medium-term contracts to have some cost certainty over the medium-term. These recommendations are consistent with the Risk Management Regulations, and with prudent industry practice to layer in short and medium-term contracts.

Resource Adequacy Contracts

Resource Adequacy (“RA”) is defined as ability to provide adequate supply during peak load and generation outage conditions. All utilities and Community Choice Aggregators (“CCA”) such as SJCE are required to procure RA to meet their customer load obligations. On February 21, 2019, the CPUC issued an order⁶ requiring SJCE and other LSEs to procure local RA for a three-year forward duration.

In addition, the CPUC issued an order on November 7, 2019 requiring LSEs to procure incremental RA to address the potential for electricity system RA shortages beginning in 2021. Pursuant to this decision⁷, SJCE is required to procure:

- At least 38.8MW of incremental RA by August 1, 2021,
- An additional 20MW of incremental RA by August 1, 2022, and
- An additional 20MW of incremental RA by August 1, 2023, for a total of 78.8 MW.

SJCE is recommending increasing SJCE’s RA procurement authority by \$76,200,000. This will bring SJCE’s total authority to \$538,000,000 from the previously authorized \$461,800,000 for RA from 2021-2043. SJCE seeks an increase in this authority to (1) account for the fact that RA prices continue to increase; (2) allow SJCE to meet its full RA requirements through 2023; and (3) meet the new incremental RA procurement requirement.

Low Carbon Allocations from PG&E’s Hydro and Nuclear Power Plants

Currently, SJCE customers and other CCA customers in PG&E territory pay for PG&E’s low-carbon power (large hydro and nuclear) through the Power Charge Indifference Adjustment (“PCIA”) but are not credited for the value of this power. As a result, PG&E represents that its portfolio is 85% carbon free (even though these attributes are partly paid for by CCA customers).

⁵ This is comprised of \$50,000,000 per year for long-term renewable contracts.

⁶ CPUC: Decision 05-10-042, Decision 06-06-064 and Decision 19-02-022.

⁷ CPUC: Decision 19-11-016.

To correct this issue, the CPUC encouraged PG&E to address this discrepancy through negotiations with the CCAs. These negotiations resulted in PG&E filing with the CPUC Advice Letter 5705-E which, if approved, will give all CCAs the option to take credit for the carbon-free attributes of PG&E's nuclear and large hydropower resources that CCA customers are paying for.

If SJCE rejects this option, SJCE customers will continue to pay the same amount for PG&E's hydro and nuclear resources in the PCIA. However, SJCE will have to procure additional carbon-free power to meet its Climate Smart goals for the year. If the CPUC timely approves and SJCE accepts the PG&E low-carbon allocation, SJCE would achieve a power mix that is more than 86% carbon-free in 2020 without buying additional carbon-free power. ***Conversely, if SJCE rejects the nuclear portion of the allocation SJCE will have to procure approximately \$5 million of additional carbon-free power to meet its 86% carbon-free goal.*** Similarly, in 2021, if SJCE accepts the carbon-free allocation from PG&E, SJCE would achieve a 100% carbon-neutral mix (26% nuclear, 29% hydro) and save approximately \$10 million dollars.⁸

The low-carbon allocations come from existing facilities that will operate regardless of whether SJCE takes the allocations. The nuclear allocation comes from Diablo Canyon Power Plant, which is scheduled to begin decommissioning in 2025 and be fully decommissioned by 2026. SJCE supports the closure of Diablo Canyon for both economic and safety reasons. However, accepting the PG&E low-carbon allocations is a prudent business decision since failure to do so merely credits PG&E for resources paid for by SJCE's customers.

The Clean Energy Community Advisory Commission ("CECAC") has considered this issue and recommends that SJCE should accept these allocations if SJCE's analysis determines that the benefits of accepting the allocation outweighs the risks.

SJCE has determined that the benefits outweigh the risks. SJCE does not believe that accepting the allocation will weaken SJCE's arguments for reforming the PCIA. SJCE is continuing engagement to push for reforms on the PCIA. Moreover, SJCE intends to develop a communications plan to explain the acceptance of the PG&E low-carbon allocation. Finally, because SJCE customers will pay their proportional share of Diablo Canyon's costs irrespective of whether SJCE accepts the allocation, SJCE's determination to accept the PG&E low-carbon

⁸ The difference in potential savings from 2020 to 2021 results from: 1) the fact that an allocation will only go into effect after the CPUC acts (the CPUC has not yet acted on PG&E's Advice Letter); 2) the fact that SJCE's carbon goal increases in 2021 and; 3) the degree of low-carbon resources procurement SJCE had already procured for each year at the time the PG&E allocation became a realistic possibility. Since it is now already mid-March and the CPUC has not yet acted, part of the benefit for 2020 has already been foregone. Moreover, to date PG&E has not yet proposed to allocate low carbon resources in 2021, but CalCCA continues to engage with PG&E on this issue. Any savings for 2021 depend on prompt action by PG&E and the CPUC.

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allocation will not impact the operation of Diablo Canyon or delay its closure. *SJCE remains committed to supporting closure of Diablo Canyon no later than the currently scheduled 2025-2026 time-period.*

Amending Subsection B of Resolution No. 78711 to allow SJCE to Align Preparation of its IRP with CPUC Timelines

Modifying Resolution No. 78711 to allow CED to submit SJCE's IRP for City Council approval prior to submitting the IRP to the California Public Utilities Commission ("CPUC"), rather than in March 2020 (as required in Resolution No. 78711), will allow SJCE to align its IRP work with the CPUC's schedule and include necessary planning inputs that will not be available by the March 2020 deadline.

In Resolution 78711, dated June 14, 2018, City Council approved IRP principles for preparation of the SJCE's 2018 IRP and ordered CED to present updated IRPs every other year by March, consistent with a CPUC requirement to file an IRP by May 1 every other year. CED is preparing SJCE's 2020 IRP and is working cooperatively with three other CCAs to perform the analysis. The CPUC has delayed issuing critical information that is necessary to complete the analysis and has extended the deadline for submission of the IRP to July 1, 2020. Accordingly, CED is requesting City Council to amend Subsection (B) of Resolution 78711, to modify the date that CED will present SJCE's IRP. Under this recommendation, "CED plans to present the SJCE IRP for Council Approval prior to final submission to the CPUC", rather than "by March of all even years." If this modification is approved, CED will submit SJCE's 2020 IRP to Council for its approval in June 2020.

CONCLUSION

This request comprises SJCE's annual request for an increase in its power procurement authority to continue to procure power products in accordance with the Energy Risk Management Policy and the Energy Risk Management Regulations. The requested authority allows SJCE to meet: (1) SJCE's entire anticipated power needs in 2020 and 2021; (2) 80 percent of SJCE's anticipated power needs in 2022 and 2023; (3) 30 percent of SJCE's anticipated power needs in 2024 through 2026; and (4) its regulatory requirements for RA. All such procurement is subject to the Energy Risk Management Policy, the appropriation of funds, and Risk Oversight Committee approval of all contracts with a duration of ten years or more. SJCE also seeks approval for acceptance of low-carbon power products from PG&E in a manner that will save SJCE ratepayers tens of millions of dollars and will not increase nuclear output or extend the life of related nuclear facilities. Finally, SJCE is seeking a change in the schedule for submitting its IRP to City Council for approval to accommodate delays by the CPUC in making available critical inputs.

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EVALUATION AND FOLLOW-UP

Staff will add all executed contracts to its quarterly summaries of executed short, mid, and long-term power supply contracts. As previously reported, this report will include: the counterparty name, the product type, the energy delivery period, the agreement date, and the total contracted amount for the quarter.

CLIMATE SMART SAN JOSE

The recommendation in this memo 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 March 24, 2020 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

The Clean Energy Community Advisory Commission (CECAC) reviewed the carbon-free allocation issue at its February 4, 2020 meeting. Below is the CECAC’s recommendation:

The CECAC concurs with SJCE’s recommendation that the City Council accept its allocation of greenhouse gas-free (GHG-free) attributes from large hydropower and existing excess nuclear power generation as part of an agreement set out in PG&E Advice Letter 5705-E, if SJCE staff analysis determines that the benefits of accepting the allocation outweighs the risks. Specifically, these risks include 1) whether SJCE will still be able to support the broader CCA movement by joining them to contest the inclusion of nuclear in the PCIA, plus actively participate in other PCIA actions, 2) the assessments of likely impacts to SJCE’s “clean” image or opt-out rates due to nuclear appearing on the Power Content Label, and 3) the level of confidence that acceptance of the allocation will not increase nuclear usage or extend the life of Diablo Canyon.

In October 2018, the CPUC required CCA customers to pay for nuclear power by including it in the PCIA fee. SJCE, all the other California CCAs, and their advocates opposed this decision. SJCE customers are currently paying tens of millions of dollars annually for utility owned generation including nuclear energy via the PCIA, but SJCE cannot claim that portion of carbon-

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free energy. By accepting the allocation, SJCE can correct what is essentially an accounting inaccuracy, while maintaining SJCE's stated goals for carbon neutrality and renewable power. The CECAC does not recommend purchasing any additional nuclear if it becomes available.

Given that SJCE is already required to pay for the very expensive nuclear energy via the PCIA, the CECAC agrees that the financial benefits will allow SJCE to bolster its operational reserves to shield customers from potential volatility from the PCIA, PG&E bankruptcy, and other factors, as well as perhaps expedite investment in local resilience by buying/building more local renewable energy and storage. Based on these assumptions and a favorable risk-benefit analysis or risk mitigation plan, the CECAC recommends that the City Council approve the recommendation that SJCE accept its nuclear and hydro allocation.

FISCAL/POLICY ALIGNMENT

The recommended actions support Climate Smart San José (action 1.1 Transition to a Renewable Energy Future) and the Envision San José 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

COST SUMMARY/IMPLICATIONS

Approving the recommendation will allow SJCE to procure power supply needs in line with approved Risk Management Regulations for calendar years 2020-2026 (fiscal years 2020-2021 through 2025-2026). (See Table 1 and Attachment 2). The recommendation would allow SJCE to procure 100 percent of its expected RA requirements over the next 4 years and approximately 20 percent of SJCE's annual expected RA requirements through 2043. Attachment 2 details these costs.

The City appropriates funding annually to cover the projected energy costs. The payments under these contracts are made based on the actual energy delivered, subject to the appropriation of funds.

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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.

/s/

Lori Mitchell

Director, Community Energy

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

Attachment 1 – Key Terms and the Edison Electric Power Purchase Agreement

Attachment 2 – Approved Requested Authority



Attachment 1
Term Sheet for Power Purchase Agreement – Renewables Only

THIS TERM SHEET FOR POWER PURCHASE AGREEMENT (“**Term Sheet**”) is entered into as of _____, 2020 (the “**Effective Date**”), between City of San José, a California municipality, doing business as San José Clean Energy (“**SJCE**”) and [*Respondent*] (“**Respondent**”). This Term Sheet includes the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) to be negotiated between SJCE (“**Buyer**”) and [*e.g., Project Company LLC*] (“**Seller**”) (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “Party” and collectively the “Parties.” Notwithstanding anything herein to the contrary, that until a definitive agreement is approved by Buyer’s management and City Council and signed and delivered by each Buyer and Seller, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction.

1. PPA Terms.

Seller:	[<i>Seller Name, e.g., Project Company LLC</i>] <i>(If applicable, please identify Seller’s guarantor)</i>
Buyer:	City of San José, a California municipality, doing business as San José Clean Energy
Defined Terms:	Please see the Definitions section below for additional definitions.
Facility:	“ Facility ” or “ Project ” means the [____] project, located in [County], in the State of [California].
Guaranteed Capacity:	The Guaranteed Capacity of the Facility is [____] MW.
Product:	The “ Product ” shall meet the Portfolio Content Category 1 specifications, and includes all of the following: (1) Delivered Energy: All of the as-available electric energy generated by the Facility, delivered to the Delivery Point, as measured by CAISO-approved meters, pursuant to the Scheduling Requirements; (2) Environmental Attributes: All renewable energy credits (“ RECs ”) and any other environmental attributes associated with Delivered Energy; (3) Capacity Rights: All capacity rights, including resource adequacy benefits, if any, associated with the Facility; and

	<p>(4) Ancillary Services: All ancillary services, products and other attributes, if any, associated with the Facility.</p> <p>Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.</p>
<p>Delivery Term:</p>	<p>[____] Contract Years from the Commercial Operation Date.</p>
<p>Commercial Operation Date:</p>	<p>The “Commercial Operation Date” or “COD” shall be the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved. “Commercial Operation” means the condition existing when Seller has fulfilled the following conditions precedent in the PPA and provided notice of same to Buyer, including providing a certificate from an independent engineer to Buyer with respect to subparts (i), (ii), (iii) and (iv):</p> <ul style="list-style-type: none"> (i) Facility has met all Interconnection Agreement requirements and is capable of delivering energy from the Facility to the CAISO; (ii) Commissioning of equipment has been completed in accordance with the manufacturer’s specification; (iii) At least 95% of Guaranteed Capacity has been installed and commissioned; (iv) Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Facility; (v) All applicable permits and government approvals required for the operation of the Facility have been obtained; (vi) Seller has obtained all real property rights; (vii) Security requirements for the Delivery Term have been met; (viii) Seller has paid Buyer all amounts owing under the PPA, if any, including Daily Delay Damages and Commercial Operation Delay Damages; and (ix) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer. <p>Seller shall provide notice of expected COD to Buyer in writing at least sixty (60) days in advance of such date.</p>
<p>Expected Construction Start Date:</p>	<p>Seller reasonably expects to achieve Construction Start by the following date [_____] (the “Expected Construction Start Date”).</p>

<p>Guaranteed Construction Start Date:</p>	<p>The “<u>Guaranteed Construction Start Date</u>” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “<u>Daily Delay Damages</u>”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.</p>
<p>Expected Commercial Operation Date:</p>	<p>Seller reasonably expects to achieve Commercial Operation by the following date [_____] (the “<u>Expected Commercial Operation Date</u>”).</p>
<p>Guaranteed Commercial Operation Date:</p>	<p>The “<u>Guaranteed Commercial Operation Date</u>” or “<u>Guaranteed COD</u>” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD.</p> <p>“<u>Delay Damages</u>” are equal to the Development Security divided by 60. Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which Delay Damages were paid in advance.</p>

	Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.
Project Interconnection Point:	The Project shall interconnect to [e.g., XX substation] (the “ Interconnection Point ”). Seller shall be responsible for all costs of interconnecting the Project to the Interconnection Point.
Delivery Point:	“ Delivery Point ” means [the Facility Pnode] on the CAISO grid.
Settlement Point:	The “ Settlement Point ” shall be [_____]. <i>(Note: SJCE is requesting pricing based both the pNode and NP-15 (TH_NP15_GEN-APND)).</i>
CAISO Market:	Day-Ahead
Deliverability:	The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date, if applicable.
Site Control:	Seller shall maintain site control throughout the Delivery Term.
Permits and Approvals:	Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“CEQA”) or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project.
Project Development Milestones:	<ul style="list-style-type: none"> • [date] – receipt of CEC pre-certification • [date] – execution of Interconnection Agreement • [date] – procurement of major equipment • [date] – obtain federal and state discretionary permits • [date] – Guaranteed Construction Start Date • [date] – obtain Full Capacity Deliverability Status, if applicable • [date] – Guaranteed Commercial Operation Date
PPA Price:	The “ PPA Price ” shall be \$[___]/MWh of Delivered Energy flat with no escalation. As applicable, Buyer shall receive a credit for an adjustment based on the Settlement Point.

	<p>Prior to COD, Buyer will purchase Test Energy at fifty percent (50%) of the PPA Price for up to 90 days.</p>
<p>Expected Energy:</p>	<p>[_____] MWh during the first Contract Year with [%] reduction in Expected Energy for each year thereafter during the Delivery Term. <i>[Note: Seller may want to insert a table for each Contract Year of the Delivery Term showing associated Expected Energy.]</i></p>
<p>Scheduling Requirements and CAISO Settlements:</p>	<p>Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO), or “SC,” for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer.</p> <p>Seller shall provide to Buyer non-binding annual, monthly, day-ahead, and real-time forecasts of Delivered Energy within a timeline that allows Buyer or Buyer’s agent the ability to meet CAISO market and scheduling deadlines. Outage and curtailment notifications will be required by Buyer as well as access to Facility generation data.</p>
<p>Monthly Settlement and Invoice:</p>	<p>Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.</p> <p>Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process.</p> <p>A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the</p>

	<p>disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section ## within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.</p>
<p>Output Guarantee:</p>	<p>The Seller guarantees that Delivered Energy amounts during the Delivery Term shall meet or exceed the Guaranteed Output Threshold for each Performance Measurement Period.</p> <p>The “Guaranteed Output Threshold” shall be equal to the following listed percentages of the Annual Expected Output, based on technology type:</p> <ul style="list-style-type: none"> • Solar: 170% • Wind: 150% • Geothermal: 90% • Small Hydro: 170% <p>The “Performance Measurement Period” shall be each two year rolling period, commencing on the Contract Start Date.</p> <p>After each Performance Measurement Period, Seller shall calculate its performance for the Output Guarantee and provide sufficient detail to Buyer. For purposes of calculating the energy deliveries for the Output Guarantee, Seller shall add Delivered Energy and energy that was not delivered during Excused Hours. “Excused Hours” means hours where the Facility was not available due to Force Majeure, transmission provider’s (e.g., the CAISO’s), transmission owner’s, or Buyer’s failure to perform.</p>

<p>Output Guarantee Shortfall Damages:</p>	<p>In the event that the Guaranteed Output Threshold is not met for a Performance Measurement Period, Seller shall calculate Shortfall Energy and pay Buyer Shortfall Damages.</p> <p>“Shortfall Energy” shall be equal to the Guaranteed Output Threshold less the Delivered Energy less the energy not delivered during Excused Hours.</p> <p>“Shortfall Damages” shall be determined by multiplying (x) Shortfall Energy, by (y) the positive difference, if any, of the Replacement Price less the PPA Price. The “Replacement Price” shall be the total price at which the Buyer would have to pay to purchase energy, RECs and capacity of comparable value to replace the Shortfall Energy.</p>
<p>Performance Guarantee:</p>	<p>Buyer may terminate the PPA if the Project fails to deliver, and such failure is not excused by Force Majeure, at least (a) sixty-five (65%) of the Expected Energy in a single Contract Year or (b) at least 75% of the total Expected Energy for two consecutive Contract Years. In the event of such termination, Seller shall be liable to Buyer for a Termination Payment.</p>
<p>Excess Energy:</p>	<p>If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“Excess Energy”), then the price paid by Buyer for the Excess Energy shall be Zero dollars (\$0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point (“Delivery Point LMP”) is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy.</p>
<p>Annual Excess Energy:</p>	<p>If during any Contract Year, the sum of the Delivered Energy and Deemed Delivered Energy is in excess of one hundred five percent (105%) but no higher than one hundred twenty-five percent (125%) of the Annual Expected Output, then for each MWh of Delivered Energy or Deemed Delivered Energy in excess of such threshold (“Annual Excess Energy”), the applicable price paid by Buyer shall be equal to the lesser of (a) the Delivery Point LMP applicable to the interval in which such Annual Excess Energy was delivered or deemed generated, as applicable, or (b) seventy five percent (75%) of the PPA Price. If during any Contract Year, the sum of the Delivered Energy and Deemed Delivered Energy is in excess of one hundred twenty-five percent (125%), the applicable price paid by Buyer for additional Product shall be Zero dollars (\$0). Notwithstanding any provision to the contrary, in any Contract Year where the total deliveries of Delivered Energy and Deemed Delivered Energy are in excess of one</p>

	<p>hundred fifteen percent (115%), Buyer will have no obligation to pay for any additional quantities of Deemed Delivered Energy for the remainder of such Contract Year.</p>
<p>Curtailment Rights:</p>	<p>In the event the Facility is curtailed due to an Emergency (as to be defined in the interconnection agreement), Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer’s sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.</p> <p>Notwithstanding the foregoing, Buyer may curtail deliveries of energy at any time and for any duration (“Buyer-Directed Curtailment”); provided, that Buyer shall have no obligation to pay Seller for Buyer-Directed Curtailment up to the Curtailment Cap. For any Buyer-Directed Curtailment in excess of the Curtailment Cap, Buyer shall pay Seller for such energy at the PPA Price, subject the Annual Excess Energy provisions.</p> <p><i>(Note: SJCE requests Seller to itemize the cost impact, if any, of the Curtailment Cap on PPA Price.)</i></p>
<p>Operations and Maintenance:</p>	<p>Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.</p>
<p>REC Tracking System:</p>	<p>The Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.</p> <p>Each party shall be responsible for setting up an account with WREGIS.</p>
<p>Progress Reporting:</p>	<p>After execution of the PPA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Project Development Milestones; (b) identifies any missed Project Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Project Development Milestones and all subsequent Project Development Milestones by the Guaranteed Commercial Operation</p>

	<p>Date. If applicable, progress reporting shall also include reporting on small business.</p> <p>In the event Seller misses any Project Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.</p>
<p>Credit Requirements:</p>	<p>The Seller shall post security as follows:</p> <p><u>Development Security</u> – \$60/kW of Guaranteed Capacity</p> <p><u>Performance Security</u> – \$75/kW of Guaranteed Capacity</p> <p>To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security or the Delivery Term Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p> <p>To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p>
<p>Compliance with Laws</p>	<p>Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees</p>
<p>Business Tax:</p>	<p>The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the <u>Proposed Transaction</u> term.</p>
<p>RPS Compliance:</p>	<p>Seller must ensure the Facility obtains CEC pre-certification prior to the COD, obtains CEC certification within 180 days of COD and maintains such CEC certification during the Delivery Term. Seller shall ensure that the Product qualifies as Portfolio Content Category 1 throughout the Delivery Term. If a change of law occurs after execution of the PPA that impacts Facility’s CEC certification or the Product’s qualification as Portfolio Content Category 1, then Seller</p>

	<p>shall comply with such change of law as necessary to maintain the Facility CEC certification and Product eligibility described above.</p>
<p>Assignment:</p>	<p>Neither party may assign the PPA without prior written consent of the other party, which will not be unreasonably withheld; provided, that Seller has the right to assign the PPA as collateral for any financing or refinancing of the Facility without the consent of Buyer.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which will not be unreasonably withheld.</p> <p>Seller shall pay Buyer’s reasonable expenses, including attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under the PPA, or to modify such PPA.</p>
<p>Appropriation of Funds:</p>	<p>Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the PPA shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the PPA; provided, however, that (a) Buyer has created and set aside the Designated Fund for payment of its obligations under the PPA and (b) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under the PPA and all of Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer’s payment obligations under the PPA are special limited obligations of Buyer payable solely from the Special Fund and are not 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. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of the PPA.</p>
<p>Designated Fund and Limited Obligation:</p>	<p>Designated Fund. Buyer’s payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund (“Designated Fund”) that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this</p>

	<p>Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.</p> <p><u>Limited Obligations.</u> Buyer’s payment obligations are special limited obligations of the Buyer payable solely from the Designated Fund. Buyer’s payment obligations under this Agreement are not 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.</p>
<p>Force Majeure:</p>	<p>(a) “<u>Force Majeure Event</u>” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.</p> <p>(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.</p> <p>Notwithstanding the foregoing, the term “<u>Force Majeure Event</u>” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract</p>

	<p>Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date.</p>
<p>Other Standard Contract Terms to be included in the PPA:</p>	<p><u>Event of Default:</u> Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, assignment not permitted by the PPA, Seller failure to achieve Construction Start within one hundred eighty (180) days of Guaranteed Construction Start Date, Seller failure to achieve Commercial Operation with sixty (60) days after the Guaranteed Commercial Operation Date, and other Events of Default expressly provided for in this Term Sheet. Buyer shall be entitled to termination damages, as well as all remedies available at law and equity.</p> <p><u>Indemnification:</u> Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees collectively (“Indemnifiable Event”), to the extent such Indemnifiable Event arises out of, , pertains to, or relates to any of the following:(a) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Seller or any of its subcontractors or anyone that they control; (b) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Buyer’s use of the Product, deliverables or other items provided by the</p>

	<p>of the Seller pursuant to the requirements of this Proposed Transaction, or (c) any breach of the <u>Proposed Transaction</u>.</p> <p>The Seller’s indemnity obligations apply to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code, if applicable. Upon the Buyer’s written request, the Seller, at its own expense, must defend any suit or action that is subject to the Seller’s indemnity obligations.</p> <p>The Seller’s indemnity obligations survive the expiration or earlier termination of the <u>Proposed Transaction</u>.</p> <p><u>Governing Law</u>: State of California</p> <p><u>Venue</u>: Santa Clara County</p>
<p>Definitions:</p>	<p>The following terms, when used herein with initial capitalization, shall have the meanings set forth below:</p> <p>“<u>CAISO</u>” means the California Independent System Operator.</p> <p>“<u>CAISO Tariff</u>” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.</p> <p>“<u>California Renewables Portfolio Standard</u>” or “<u>RPS</u>” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, <i>inter alia</i>, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.</p> <p>“<u>CEC</u>” means the California Energy Commission, or any successor agency performing similar statutory functions.</p> <p>“<u>CEQA</u>” means the California Environmental Quality Act.</p> <p>“<u>Contract Year</u>” means a period of twelve (12) consecutive months beginning on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.</p> <p>“<u>Curtailment Cap</u>” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.</p> <p>“<u>Deemed Delivered Energy</u>” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Generating Facility due to a Buyer-Directed Curtailment, less the amount of Energy delivered</p>

	<p>to the Delivery Point during such period; <i>provided</i> that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).</p> <p>“<u>Delivery Term</u>” shall mean the period of Contract Years beginning on the Commercial Operation Date.</p> <p>“<u>Full Capacity Deliverability Status</u>” has the meaning set forth in the CAISO Tariff.</p> <p>“<u>Guaranteed Capacity</u>” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, as the same may be adjusted pursuant to the PPA.</p> <p>“<u>Letter(s) of Credit</u>” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.</p> <p>“<u>MW</u>” means megawatts in alternating current, unless expressly stated in terms of direct current.</p> <p>“<u>MWh</u>” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.</p>
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2. **Neither Party Obligated to Enter Into Proposed Transaction.** This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a PPA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the PPA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.
3. **Other Agreements.** In connection with this Term Sheet, Seller shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) of \$3,000/MW to Buyer within three (3) Business Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.
4. **Expenses.** Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.
5. **Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Exclusivity Period (as defined in the Exclusivity Agreement), as

such Exclusivity Period may be extended by the Parties in accordance with the Exclusivity Agreement.

6. **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Counterparts and Electronic Signatures.** This Term Sheet may be executed electronically and in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
8. **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
9. **Assignment.** This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party's prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
10. **No Consequential Damages.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS AGREEMENT.

Attachment 2 - Power Procurement, Acceptance of Carbon-Free Allocations, and Integrated Resource Plan Time Change

CY	Est. Total Energy Costs	Est. Total Energy Costs - RMR Max	Percent of Energy Need	Risk Management Regulation Energy Coverage Threshold	Requested Additional Renewable/Energy Authority (\$)	Requested Additional Annual RA**	Amounts Committed	Est. Total Power Supply Cost (\$)**	Previously Approved Power Supply Contract Authority (\$)	Total Additional Requested+	Total Approved + Additional Requested Authority (\$)
2020	\$ 199,000,000	\$ 229,000,000	115%	115%	\$ -	\$ -	\$ 220,000,000	\$ 291,000,000	\$ 302,000,000	\$ 18,700,000	\$ 320,700,000
2021	\$ 178,000,000	\$ 204,000,000	115%	115%	\$ -	\$ 6,200,000	\$ 140,000,000	\$ 282,000,000	\$ 213,000,000	\$ 95,100,000	\$ 308,100,000
2022	\$ 198,000,000	\$ 159,000,000	80%	80%	\$ -	\$ 7,300,000	\$ 32,000,000	\$ 288,000,000	\$ 135,000,000	\$ 109,200,000	\$ 244,200,000
2023	\$ 187,000,000	\$ 149,000,000	80%	80%	\$ -	\$ 6,600,000	\$ 14,000,000	\$ 272,000,000	\$ 105,600,000	\$ 126,500,000	\$ 232,100,000
2024	\$ 207,000,000	\$ 62,000,000	30%	70%	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 274,000,000	\$ 106,200,000	\$ 23,000,000	\$ 129,200,000
2025*	\$ 212,000,000	\$ 64,000,000	30%	70%	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 279,000,000	\$ 60,000,000	\$ 24,550,000	\$ 84,550,000
2026*	\$ 217,000,000	\$ 66,000,000	30%	70%	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 285,000,000	\$ 60,000,000	\$ 26,250,000	\$ 86,250,000
2027*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 290,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2028*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 296,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2029*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 301,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2030*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 307,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2031*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 314,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2032*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 320,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2033*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 326,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2034*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 333,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2035*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 339,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2036*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 346,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2037*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 353,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2038*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 7,000,000	\$ 360,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2039*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 7,000,000	\$ 367,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2040*	-	-	-	N/A	\$ -	\$ 3,300,000	\$ 7,000,000	\$ 374,000,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2041*	-	-	-	N/A	\$ -	\$ -	\$ 7,000,000	\$ 378,000,000	\$ 60,000,000	\$ -	\$ 60,000,000
2042*	-	-	-	N/A	\$ -	\$ -	\$ 7,000,000	\$ 386,000,000	\$ 60,000,000	\$ -	\$ 60,000,000
2043*	-	-	-	N/A	\$ -	\$ -	\$ -	\$ 394,000,000	\$ 60,000,000	\$ -	\$ 60,000,000
2044*	-	-	-	N/A	\$ -	\$ -	\$ -	\$ 401,000,000	\$ -	\$ -	\$ -
Total					\$ -	\$ 76,200,000	\$ 628,000,000	\$ 8,156,000,000	\$ 2,001,800,000	\$ 634,200,000	\$ 2,636,000,000

+ Total: Due to rounding, components may not sum to totals.

* This period extends beyond SJCE's detailed pro-forma. Accordingly, these numbers are very preliminary estimates of the annual costs each of these years.

**D 19-11-016, Additional Budget 2021/2022

*** Includes all power supply costs: RPS, RA, RA for D. 19-11-016, GHG-free, Energy hedges, and CAISO fees.

Attachment 2 - Power Procurement, Acceptance of Carbon-Free Allocations, and Integrated Resource Plan Time Change

Fiscal Year	Est. Total Energy Costs	Est. Total Energy Costs - RMR Max	Percent of Energy Need	Risk Management Regulation Energy Coverage Threshold	Requested Additional Renewable/Energy Authority (\$)	Requested Additional Annual RA**	Amounts Committed	Est. Total Power Supply Cost (\$)**	Previously Approved Power Supply Contract Authority (\$)	Total Additional Requested+	Total Approved + Additional Requested Authority (\$)
2020 2021	\$ 188,920,000	\$ 217,000,000	115%	115%	\$ -	\$ 2,976,000	\$ 181,600,000	\$ 286,680,000	\$ 259,280,000	\$ 55,372,000	\$ 314,652,000
2021 2022	\$ 187,600,000	\$ 182,400,000	97%	98%	\$ -	\$ 6,728,000	\$ 88,160,000	\$ 284,880,000	\$ 175,560,000	\$ 101,868,000	\$ 277,428,000
2022 2023	\$ 192,720,000	\$ 154,200,000	80%	80%	\$ -	\$ 6,964,000	\$ 23,360,000	\$ 280,320,000	\$ 120,888,000	\$ 117,504,000	\$ 238,392,000
2023 2024	\$ 196,600,000	\$ 107,240,000	55%	75%	\$ -	\$ 5,016,000	\$ 14,000,000	\$ 272,960,000	\$ 105,888,000	\$ 76,820,000	\$ 182,708,000
2024 2025*	\$ 209,400,000	\$ 62,960,000	30%	70%	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 276,400,000	\$ 84,024,000	\$ 23,744,000	\$ 107,768,000
2025* 2026*	\$ 214,400,000	\$ 64,960,000	30%	70%	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 281,880,000	\$ 60,000,000	\$ 25,366,000	\$ 85,366,000
2026* 2027*		-	-	N/A	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 287,400,000	\$ 60,000,000	\$ 15,234,000	\$ 75,234,000
2027* 2028*		-	-	N/A	\$ -	\$ 3,300,000	\$ 14,000,000	\$ 292,880,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2028* 2029*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,520,000	\$ 298,400,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2029* 2030*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 303,880,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2030* 2031*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 310,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2031* 2032*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 316,880,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2032* 2033*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 322,880,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2033* 2034*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 329,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2034* 2035*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 335,880,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2035* 2036*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 342,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2036* 2037*		-	-	N/A	\$ -	\$ 3,300,000	\$ 13,000,000	\$ 349,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2037* 2038*		-	-	N/A	\$ -	\$ 3,300,000	\$ 10,120,000	\$ 356,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2038* 2039*		-	-	N/A	\$ -	\$ 3,300,000	\$ 7,000,000	\$ 363,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2039* 2040*		-	-	N/A	\$ -	\$ 3,300,000	\$ 7,000,000	\$ 370,360,000	\$ 60,000,000	\$ 3,300,000	\$ 63,300,000
2040* 2041*		-	-	N/A	\$ -		\$ 7,000,000	\$ 375,920,000	\$ 60,000,000	\$ 1,716,000	\$ 61,716,000
2041* 2042*		-	-	N/A	\$ -	\$ -	\$ 7,000,000	\$ 381,840,000	\$ 60,000,000	\$ -	\$ 60,000,000
2042* 2043*		-	-	N/A	\$ -	\$ -	\$ 3,640,000	\$ 389,840,000	\$ 60,000,000	\$ -	\$ 60,000,000
2043* 2044*		-	-	N/A	\$ -	\$ -	\$ -	\$ 397,360,000	\$ 31,200,000	\$ -	\$ 31,200,000
Total					\$ -	\$ 74,484,000	\$ 522,400,000	\$ 7,807,800,000	\$ 1,856,840,000	\$ 634,200,000	\$ 2,491,040,000

+ Total: Due to rounding, components may not sum to totals. Additionally, because of renewable attributes to be procured between 2022-2032 an additional \$2M of Requested Authority is included in the 'Total Additional Requested'.

* This period extends beyond SJCE's detailed pro-forma. Accordingly, these numbers are very preliminary estimates of the annual costs each of these years.

**D 19-11-016, Additional Budget 2021/2022

*** Includes all power supply costs: RPS, RA, RA for D, 19-11-016, GHG-free, Energy hedges, and CAISO fees.