



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell

SUBJECT: POWER PROCUREMENT

DATE: June 2, 2021

Approved

Date

06/03/21

RECOMMENDATION

Adopt a resolution:

1. Increasing the authority granted to the Director of Community Energy or her designee to negotiate and execute contracts, including but not limited to long-term Power Purchase Agreements (“PPAs”), subject to the Energy Risk Management Policy, the appropriation of funds, and Risk Oversight Committee approval of all contracts with a duration of five years or more, for the procurement of:
 - a) Power supply products, other than Resource Adequacy products, including but not limited to renewable projects and shaped or dispatchable power products, by \$298,000,000 from \$2,373,700,000 to an amount not to exceed \$2,671,700,000 in aggregate in Calendar Years 2021 through 2043, and
 - b) Resource Adequacy including but not limited to storage projects combined with dispatchable power, by \$310,000,000 from \$488,000,000 to an amount not to exceed \$798,000,000 in aggregate in Calendar Years 2021 through 2043.
2. Authorizing the Director of Community Energy or her designee, in consultation with the City Attorney’s Office, to negotiate and execute consultant and cost-sharing agreements with California Community Power and other Community Choice Aggregators, in an amount not to exceed a total of \$320,000 per year in aggregate, to conduct necessary activities to identify, evaluate, and negotiate potential California Community Power energy programs and projects, including but not limited to: (1) issuing requests for information and request for proposals, (2) evaluating bids submitted through competitive solicitations, (3) negotiating contracts with selected bidders, and (4) related activities.
3. Authorizing the Director of Community Energy or her designee to negotiate and execute exclusivity agreements with shortlisted bidders in San José Clean Energy competitive power procurement processes.

OUTCOME

Approving the requested increase in the procurement authority will allow San José Clean Energy (“SJCE”) to procure power supplies to meet recommended risk management coverage thresholds. The increased authority would also allow SJCE to enter into short-, medium-, and long-term agreements for (a) additional renewable and low carbon products to support updated power-mix goals in the new rate products and (b) shaped and dispatchable energy needed to complement renewable power and SJCE’s load shape. Medium- and long-term agreements can provide for more stable prices. The additional authority will also allow SJCE to comply with Resource Adequacy (“RA”) requirements. These recommendations are consistent with SJCE’s 2020 Integrated Resource Plan (“IRP”) and Energy Risk Management Policy and Regulations.

Approving the requested authority will also allow SJCE to more efficiently identify and solicit projects with other Community Choice Aggregators (“CCAs”) and through California Community Power (“CC Power”) and work with renewable energy developers to negotiate long-term power purchase agreements.

BACKGROUND

Section 26.50.020 of the Municipal Code states that the City may enter into 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 the Community Energy Department (“CED”) to submit an Energy Risk Management Policy to City Council. On May 1, 2018, the City Council approved the Energy Risk Management Policy. 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, and all City Council procurement authorizations have been subject to the Energy Risk Management Policy and ROC oversight.

On April 7, 2020, City Council increased the authority granted to the Director of Community Energy or her designee for the procurement of (1) 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; and (2) Resource Adequacy products by \$76,200,000 from \$461,800,000 to \$538,000,000 in aggregate in calendar years 2021 through 2043. City Council also approved the acceptance of low carbon power products from Pacific Gas & Electric’s hydroelectric and nuclear generating plants.

On August 25, 2020, City Council increased the authority granted to the Director of Community Energy or her designee for the procurement of (1) long-term renewable energy by \$500,000,000 for a total not to exceed amount of \$1,500,000,000 in aggregate in calendar years 2024 through 2043; and (2) short- and medium-term power supply products, other than RA products, by \$212,000,000 to an amount not to exceed \$275,000,000 in aggregate in calendar years 2024 through 2032.

On January 5, 2021, City Council authorized joining California Community Power (“CC Power”) to facilitate activities with other CCAs to explore, solicit, develop and contract for power projects and programs through CC Power.

On May 11, 2021, City Council adopted a resolution (1) amending San José Clean Energy’s GreenSource default product beginning May 15, 2021 by increasing its renewable energy content to 55% and its rates to 8% above Pacific Gas and Electric Company’s (“PG&E”) generation rates, after accounting for the Franchise Fee Surcharge and the Power Charge Indifference Adjustment; provided that, SJCE’s 100% renewable energy TotalGreen product will continue to be 0.5 to 1 cent per kWh higher than GreenSource; and (2) establishing a third product called GreenValue, with rates set at parity to PG&E generation rates, after accounting for the Franchise Fee Surcharge and the Power Charge Indifference Adjustment.

ANALYSIS

Power Supply Procurement Authority Approval

Figure 1 shows SJCE’s expected power supply costs through 2043, the total procurement previously approved by Council, the amounts already committed, and the additional authority requested in this memorandum. Attachment 1 details the exact amounts.

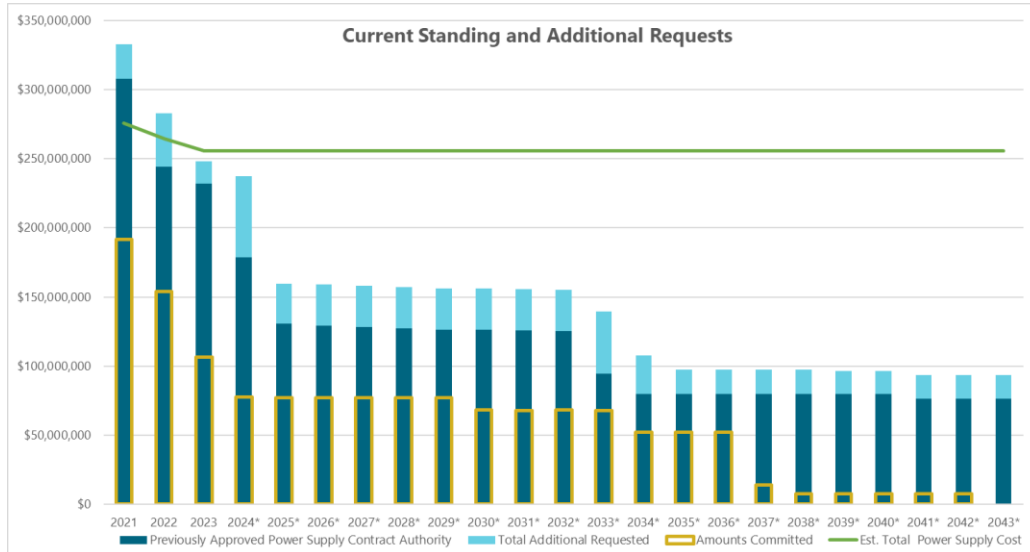


Figure 1. Summary of Existing and Requested Authority

*The period shown in Figure 1 extends beyond SJCE’s detailed pro-forma model. Accordingly, these numbers are early stage estimates of the annual costs in the years beyond 2023.

SJCE assesses the additional authority needed to meet applicable City and state requirements and to undertake prudent power procurement each year and requests any necessary additional procurement authority in the Spring. This request is needed to allow SJCE to (1) meet forward procurement guidelines in the Energy Risk Management Policy and Regulations; (2) procure

priority products such as shaped and dispatchable energy needed to complement renewable power and SJCE's load shape pursuant to longer term agreements; (3) procure renewable and low carbon products needed to achieve updated power mix goals in the new rate products; and (4) comply with its current RA requirements and an expected additional California Public Utilities Commission ("CPUC") RA procurement mandate.

SJCE will procure power supply and RA products according to the Energy Risk Management Policy and Regulation. These requirements include guidelines for forward procurement, transaction limitations to authorized counterparties, and pre-authorized credit and concentration limits. As stated above, all agreements will also be subject to the appropriation of funds and Risk Oversight Committee approval of all contracts with a duration of five years or more. Finally, since staff recommends increasing the Director's procurement authority approved by Council¹, the requirements laid out in those resolutions will apply to future agreements. Therefore, procurement of power supply products and RA will (1) use authorized Edison Electric Institute ("EEI") and Western System Power Pool ("WSPP") agreements, as applicable; (2) include the key terms listed in Attachment 3 for long-term PPAs for new renewable projects;² (3) include the key terms listed in Attachment 4 for long-term RA and dispatch agreements, and (5) will be negotiated in consultation with the City Attorney's Office.³

Power Supply Authority Request (Excluding RA)

SJCE seeks to increase the authority to procure power supply products, other than RA, to an amount not to exceed \$2,671,700,000 in aggregate for calendar years 2021 through 2043. This is an increase of \$298,000,000 from the previously authorized \$2,373,700,000 for this period.

SJCE procures power products in compliance with the Energy Risk Management Regulations. The current version of the Energy Risk Management Regulations includes forward procurement guidelines for energy (without considering compliance attributes or RA) as shown in Table 1:

¹Prior Council action authorizing procurement: Resolution numbers 78636, 78747, 78796, 78864, 78908, 79014, 79109, 79465, and 79692.

² Attachment 6 also provides a sample long-term PPA. Future agreements will be substantively similar to this agreement.

³ See Attachment 2 for EEI and WSPP Agreements.

Table 1. Power Supply Risk Management Coverage Thresholds

	Minimum Coverage	Maximum Coverage
Rolling Six Months Forward	80%	115% ⁴
Rolling One Year Forward	70%	110%
Rolling Two and Three Years Forward	30%	90%
Rolling Four Years forward and beyond	30%	50%

SJCE requires additional authority to meet (1) 115 percent of SJCE’s anticipated power needs in 2021; (2) 110 percent of SJCE’s anticipated power needs in 2022; (3) 90 percent of SJCE’s anticipated power needs in 2023; (4) 80 percent of SJCE’s anticipated power needs in 2024; and (5) 40 percent of SJCE’s anticipated power needs in 2033 through 2043. As shown in Attachment 1, subject to current reasonable assumptions about power prices and SJCE load, SJCE already has sufficient authority to meet 50 percent of SJCE’s anticipated power needs in 2025-2032.

SJCE seeks authority to meet 40 percent of its anticipated power needs in 2033 through 2043 to pursue priority products like three to ten year shaped and dispatchable energy contracts. Shaped energy contracts provide different amounts of power at different times of the day in order to better fill in gaps between SJCE’s load and power procured from particular renewable projects. Dispatchable energy contracts allow SJCE to direct a generator to generate or not generate in order to better match the energy generated to SJCE’s need for power.

These types of products are increasingly important to complement renewable resources, which have distinctive profiles that do not match current standard power products and are often variable. In addition, these products are important to better match SJCE’s load, which is subject and sensitive to heat waves. Further, procuring shaped and dispatchable products pursuant to contracts having terms of three to ten years can provide for better price stability and could support more attractive prices. Finally, products such as dispatchable energy paired with RA could enable SJCE to address several needs at once.

SJCE also seeks to procure additional green products to meet the state minimum Renewable Portfolio Standard (“RPS”), remain on track with its 2020 IRP, and achieve the goals of the new rate products approved by Council on May 11, 2021.⁵ SJCE could procure such products either as renewable energy credits or pursuant to long-term PPAs with particular projects.

⁴ The Energy Risk Management Regulations permit SJCE to buy up to 115 percent of the energy supply needed to meet its expected load to mitigate the risk of expensive procurement in the 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 to meet unexpected load increases.

⁵ TotalGreen will remain 100 percent renewable, GreenSource will now aim be to 55 percent renewable, and the new GreenValue product will be minimally RPS compliant, which is 35.75 percent in 2021.

RA Authority Request

SJCE seeks to increase the Director's authority to procure RA, including but not limited to battery storage, to an amount not to exceed \$798,000,000 in aggregate for calendar years 2022 through 2043. This is an increase of \$310,000,000 from the previously authorized \$488,000,000 for this period.

RA consists of payments to generators or demand response providers to make themselves available to operate during high demand hours, thereby ensuring that there is adequate power supply during peak load and generation outage conditions. The CPUC and the California Independent System Operator ("CAISO") require all utilities and CCAs to procure RA to meet their customer load obligations.

Complying with RA requirements is challenging as the bulk of RA supplies in California are controlled by the Investor Owned Utilities ("IOUs") and a few Independent Power Producers. The CPUC requires load serving entities ("LSEs") to procure sufficient RA and applies penalties on LSEs if LSEs fail to procure the required amount and/or types of RA.⁶ RA market conditions are expected to remain tight as some traditional gas generators reach the end of their useful life and regulatory requirements for new resources increase.

On February 22, 2021, a CPUC Administrative Law Judge issued a Ruling seeking feedback on proposed Mid-Term Reliability Analysis and Proposed Procurement Requirements.⁷ This ruling, issued in the CPUC's IRP proceeding (Rulemaking 20-05-003), recommends that the CPUC order the procurement of 7,500 MW of new RA to come online 2023 through 2025, including long-duration (eight hours or longer) storage ("LDS") projects and geothermal generation. The proposal is driven by the need to support California's transition to an "affordable and reliable clean energy grid" and to ensure sufficient capacity exists to maintain reliability upon the planned retirements of Diablo Canyon Power Plant and other generating units by mid-decade. The proposal also addresses the need for a higher planning reserve margin identified by the California Independent System Operator as necessary to complement renewables. SJCE expects this ruling will create a large, incremental RA procurement requirement. The CPUC is expected to issue their final decision on this issue in June 2021.

⁶ For example, in Decision D.20-06-031, the CPUC increased system penalty prices in the summer months May through October. The CPUC penalized SJCE \$6.79 million in 2019 and \$1.12 million in 2020 for being unable to meet its RA requirements.

⁷ <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M367/K037/367037415.PDF>

SJCE continues to aggressively pursue the procurement of RA for 2021, 2022 and beyond. Nonetheless, procurement of sufficient RA at reasonable prices remains challenging. SJCE recommends an increase in procurement authority to update pricing assumptions and align them with market prices (which continue to increase), reflect more stringent CPUC RA requirements, and avoid increasing CPUC penalty amounts.

Market Risks

SJCE continues to face and monitor a variety of risks in building its supply portfolio. In addition to standard utility and market risks, SJCE currently faces the following regulatory and market risks:

- Current regulations have resulted in increasing Power Charge Indifference Amount (“PCIA”) rates⁸.
- The CPUC is considering expanding Direct Access.
- Allocation of IOU resources.
- COVID-19 and weather-related load.

For all procurement, including procurement authorized by Council, SJCE will continue to assess and consider these risks as it undertakes procurement and seeks ROC approval of agreements five years or longer.

PCIA Risk

As PCIA fees continue to drastically increase, SJCE has proposed new rate products to accommodate these additional costs without significantly impacting customer costs or compromising clean energy goals. SJCE and other CCAs continue to advocate for a fair and open PCIA process that would reduce customer costs, increase rate stability, optimize IOU portfolio management and resource allocations, and increase CCA and customer benefits from utility resources.

Direct Access Expansion Risk

Direct Access is the ability of customers to choose a supplier to provide electricity other than CCAs or IOUs. These other suppliers are known as Electric Service Providers (“ESPs”). Direct Access first became available in California under deregulation in 2000, and combined with a variety of factors, led to a crisis in the electricity sector. In response, the Legislature suspended Direct Access in 2001. It later re-opened a limited program for non-residential customers, with

⁸ The PCIA is a non-bypassable charge that applies to CCA and Energy Service Providers (“ESP”) customers intended to reimburse an IOU for the above market costs of resources the IOU bought or built before the customer changed suppliers.

participation capped by year. In 2018, SB 237 directed the CPUC to expand Direct Access by 4,000 GWh annually and to prepare a report to evaluate the impacts of re-opening the program to all non-residential customers.⁹ On May 14, 2021, the CPUC recently issued a Proposed Decision recommending against expanding Direct Access.

If the Direct Access program is expanded, SJCE could lose additional customer load. Commercial customers currently make up half of SJCE's total load. When Direct Access was made available in California in 2000, approximately 10 percent of load in San José's territory left PG&E to be served by an ESP. Since the CPUC expanded Direct Access in 2018, SJCE has lost 1.9 percent of its total load. In September 2020, Energy Division released a report recommending an initial schedule to open ten percent of eligible non-residential load per year to Direct Access starting in 2025. On May 14, 2021, the CPUC recently issued a Proposed Decision recommending against expanding Direct Access in rulemaking 19-03-009. SJCE will continue to monitor regulatory and legislative developments related to Direct Access.

At the same time, SJCE has been exploring unique product offerings in an effort to retain Direct Access eligible non-residential customers. On November 2, 2020, SJCE presented information to Council¹⁰ on Direct Renewable program options. SJCE is working to determine the optimal direct renewable energy program model and conduct further due diligence. SJCE expects to return with recommendations to City Council later this year.

Allocation of IOU Resources

In February 2020, CalCCA submitted a joint stakeholder proposal to the CPUC that would allocate to LSEs their proportional share of the portfolio of resources their customers pay for through the PCIA. This proposal was developed after extensive negotiations between the IOUs, CCAs, and Direct Access providers, but it is opposed by PG&E. On April 5, 2021, the CPUC issued a proposed decision¹¹ to provide for allocation of some but not all relevant products to LSEs.¹² The CPUC has not issued a final decision on this issue. In addition, SJCE is working with other CCAs and stakeholders to address this issue at the legislature with CalCCA sponsored

⁹[Senate Bill 237](#) and Order Instituting Rulemaking to Implement Senate Bill 237 Related to Direct Access, Retrieved from CPUC website 8/3/20:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M275/K804/275804783.PDF>

¹⁰ <https://www.sanjoseca.gov/home/showpublisheddocument?id=66809>

¹¹ <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M376/K054/376054718.PDF>

¹² This issue is discussed more extensively in the August 2020 Memorandum on SJCE's 2020 IRP available at <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4612232&GUID=C72A97BA-66E5-45F3-90AE-723FB46B4713&Options=&Search=>

SB 612 (Portantino).¹³ Until the allocation of PCIA eligible resources is resolved, it is prudent for SJCE to reserve room for the allocation of resources from PG&E, as these allocations could significantly affect SJCE’s portfolio mix.

COVID-19 and Weather-Related Load Impacts

COVID-19 has impacted energy consumption among San José’s residents and businesses. In the last year, because many employees have been working from home, SJCE has seen an average decrease in commercial load of 16.4 percent and an average increase in residential load of 10.6 percent. As shown in Figure 3, SJCE’s average load loss since mid-March 2020 has been -3.3 percent¹⁴. SJCE is planning for continued load impacts of COVID-19. The most recently updated load forecast assumes continued increased residential load, decreased commercial load, and associated shifts in the load shape.

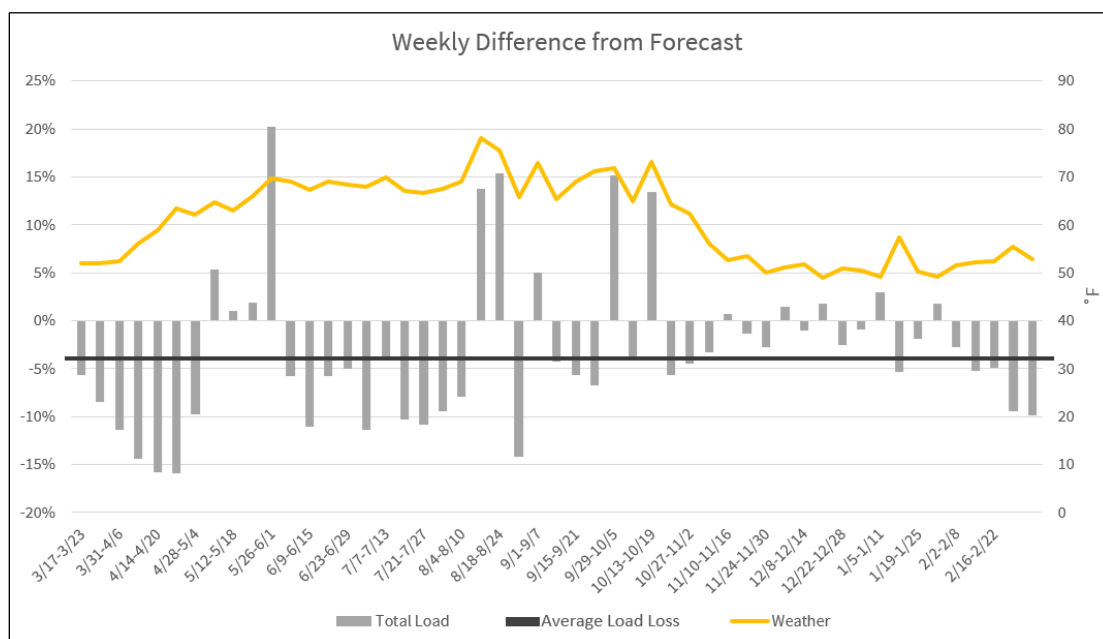


Figure 3. March 2020-March 2021 Weekly Load Variance – Forecast Compared to Actuals

SJCE’s load is also volatile during heat waves, and this effect may be exacerbated by a shift of load from commercial to residential. SJCE has seen significant increases in peak demand during multi-day heat waves, which is also typically when market prices increase. As described above, SJCE is exploring contracting with dispatchable resources or procuring shaped energy products in order to address the changes in load due to COVID-19, weather and economic activity.

¹³ SB 612 (Portantino), directs...

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB612

¹⁴ For comparison, the 2009 recession reduced energy consumption by 4.9 percent over an 18-month period.

Authorizing the Director to Agree to Pay for Project Identification and Negotiation Costs through CC Power.

On October 15, 2020, a group of eight CCAs released a request for offers (“RFO”) for stand-alone long duration storage and received a robust response of over 100 offers. On a parallel and related track, the CCAs formed CC Power to facilitate joint CCA activities to explore, solicit, negotiate, and contract with projects and programs. The joint CCA LDS procurement effort was moved to the CC Power. CC Power intends to shortlist projects soon. Negotiations will take place through the summer and final contract approvals are expected in fall of 2021. Projects signed via this solicitation could be responsive to the CPUC Mid-Term Reliability ruling discussed above.

On January 5, 2021, Council approved SJCE membership in the organization. The CC Power governing documents provide for membership dues to cover general and administrative costs. The CC Power board, of which SJCE is a member, has sought to minimize these costs, and to fund project/program identification, solicitation and contract negotiation activities through agreements with and between member CCAs that are interested in the particular activities contemplated.

Thus, CC Power costs include costs for 1) minimal general administrative costs funded through membership dues; 2) procurement pursuant to agreements between CC Power and suppliers or implementors funded through project participation agreements among interested CCA CC Power members and CC Power; and 3) CC Power project and program exploration, solicitation and contract negotiation activities. SJCE has authority to pay for general and administrative costs pursuant to Council’s approval of the CC Power’s agreement. SJCE will have to obtain City Council approval of any agreements for procurement using CC Power. SJCE expects to bring forward on recommendation on this for Council consideration in the fall of 2021.

SJCE is requesting authority for the Director or her designee to negotiate and execute agreements to fund project and program exploration and development activities, provided that such agreements shall not exceed a total aggregate amount of \$320,000 per year. This authority would both clarify how these costs should be treated and allow the Director or her designee to sign such agreements. SJCE seeks this authority to improve efficiency. Any such agreements will be developed in coordination with the City Attorney and approved by the ROC. For example, CC Power is developing cost-sharing agreements between itself and interested CC Power members to fund further costs of assessing, shortlisting, and negotiating agreements with LDS bidders.

Authorizing the Director to Execute Exclusivity Agreements

Long-term agreements take several months to a year to negotiate from the time the original offer is made. Upon shortlisting an offer, the industry standard practice is to execute an exclusivity agreement (“EA”) to lock in the price and ensure the seller does not market the same resource to another buyer. The agreement has a related shortlist deposit provided by the seller which is collected and held by SJCE for the duration of the EA term. If the seller breaches the EA by adjusting the price unfavorably or selling the project to another counterparty, SJCE can keep the

shortlist deposit as compensation for lost time and effort. Otherwise, when the EA expires, SJCE must return the shortlist deposit.

This type of agreement is in SJCE's favor and the seller bears the monetary risk. Currently, SJCE determines the shortlist deposit amount based on standard market practices such as the capacity of the offer, such as \$3,000 per megawatt ("MW") of generation and/or storage capacity. In this example, a 100 MW project would result in a \$300,000 shortlist deposit.

Because this is a very low-risk agreement related to power product solicitations, and because the market moves quickly, staff recommends that Council authorize the Director of Community Energy or her designee to sign EAs related to power contracts, modeled on SJCE's EA template included as Attachment 6, with modifications developed in coordination with the City Attorney.

Currently EAs must be signed by the City Manager. A typical solicitation may result in five to ten shortlisted offers and require the same number of EAs before negotiations can begin. Granting CED's Director this signature authority would allow staff to administer power solicitations more efficiently and effectively.

CONCLUSION

SJCE requests City Council to increase the authority of the Director for power procurement, subject to continued evaluation of risks, and the oversight and approval by the ROC. SJCE also requests City Council to authorize the Director to negotiate and execute cost sharing agreements for project/program exploration, solicitation and contract negotiation activities with CC Power and interested member CCAs, and EAs related to power contracts.

EVALUATION AND FOLLOW-UP

Staff will add all executed contracts to its quarterly informational memo that details executed short, mid, and long- term power supply contracts. 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 JOSÉ

The recommendations in this memo are consistent with Climate Smart San José energy, water, and mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the June 15, 2021 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

There is no commission recommendation or input associated with this action.

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 Energy Risk Management Regulations and to meet state requirements and City goals for renewable and low carbon products and RA. The City appropriates funding annually to cover the projected energy costs. The payments under these contracts are made based on the actual energy delivered and are subject to the appropriation of funds.

CEQA

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

The approval requested is not a “project” subject to CEQA because it involves the administrative activity of purchasing power that will result in no physical changes to the environment. Even if this approval were a “project” subject to CEQA, the approval requested would be exempt because the activity of purchasing power is purely a financial transaction, and any construction that may occur by a private party in the future in reliance on this approval would be subject to CEQA review by a governmental agency at that time when actual details of any physical proposal would be more than speculative.

/s/

LORI MITCHELL

Director, Community Energy

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

Attachment 1 – Requested Additional Procurement Authority

Attachment 2.A – EEI Agreement

Attachment 2.B – WSPP Agreement

Attachment 3 – Long-term New Renewable Project Key Terms

Attachment 4 – Long-Duration Storage Key Terms

[Attachment 5 – Sample Redacted Long-term New Renewable Project Power Purchase Agreement](#)

Attachment 6 – SJCE’s Exclusivity Agreement Template