

**ATTENTION: DCE VOTING MEMBERS WILL RECEIVE A UNIQUE PANELIST LINK BY EMAIL. PLEASE USE THIS LINK TO PARTICIPATE IN THIS MEETING.**



## **DESERT COMMUNITY ENERGY BOARD MEETING AGENDA**

**Monday, December 21, 2020  
2:30 p.m.**

*Pursuant to Governor Newsom's Executive Order N-29-20 (March 18, 2020), this meeting will only be conducted via video/teleconferencing.*

### **INSTRUCTIONS FOR PUBLIC PARTICIPATION**

**Online:**

**<https://us02web.zoom.us/j/82520490603?pwd=SFp0T3JWcGp5dnN0T09UVmNhSld1UT09>**

Passcode: 086107

**One tap mobile:**

**US: +16699009128,,82520490603#**

**By Phone:**

**Dial In #: +1 669 900 9128**

**Webinar ID: 825 2049 0603**

**Passcode: 086107**

This will provide listening access and ability to address the DCE Board when called upon.

**IF YOU ARE UNABLE TO CONNECT VIA DIAL IN OPTION, PLEASE CALL 760-346-1127**

Members of the public are encouraged to submit comment in connection with the Desert Community Energy meeting by email to: [cvag@cvag.org](mailto:cvag@cvag.org) by 5:00 p.m. on the day prior to the committee meeting. Comments intended to be read aloud into the record should be no more than 300 characters in length.

**THIS MEETING IS HANDICAPPED ACCESSIBLE.  
ACTION MAY RESULT ON ANY ITEMS ON THIS AGENDA.**

**1. CALL TO ORDER**

**2. ROLL CALL**

**A. Member Roster**

[P4](#)

**3. PUBLIC COMMENTS ON AGENDA ITEMS**

Any person wishing to address the Desert Community Energy Board on items appearing on this agenda may do so at this time. Please limit comments to 3 minutes. At the discretion of the chair, additional public comment time and/or opportunities during the meeting may be granted.

**4. BOARD MEMBER / DIRECTOR COMMENTS**

**5. CONSENT CALENDAR**

**A. Approve Minutes from Board Meeting of November 16, 2020**

[P5](#)

**B. Cathedral City Withdrawal from DCE**

[P8](#)

**6. DISCUSSION / ACTION**

**A. DCE Long Term Renewable Energy Procurement – Jaclyn Harr, The Energy Authority**

[P36](#)

**Recommendation:** Adopt Resolution 2020-09, approving three, 15-year power purchase agreements with Terra-Gen, LLC, and authorize the Executive Director and/or Legal Counsel to make minor modifications before execution of the agreements

**B. December 2020 DCE Rate Adjustment Update – Don Dame, DCE Energy Consultant**

[P43](#)

**Recommendation:** Information

**C. Recap of 2020 DCE Program Activities – Katie Barrows**

[P45](#)

**Recommendation:** Information

**7. INFORMATION**

**A. Attendance Record**

[P48](#)

**B. Board Meeting Dates - 2021**

[P49](#)

**C. Utility Discount (CARE/FERA) Program Update**

[P50](#)

**D. Unaudited Financial Report for July 1 to November 30, 2020**

[P52](#)

**8. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

Any person wishing to address the Board on items not appearing on this agenda may do so at this time. Please limit comments to 2 minutes. At the discretion of the chair, additional public comment time and/or opportunities during the meeting may be granted.

**9. ANNOUNCEMENTS**

The next DCE meeting will be held January 25, 2021 at 2:30 p.m. via Zoom webinar.

**10. ADJOURN**

**Item 2A**

<b>Desert Community Energy Board Member Roster</b>	
<b>Voting Members</b>	<b>Representative</b>
City of Cathedral City	Mayor Raymond Gregory <i>Alternate: Councilmember Rita Lamb</i>
City of Palm Desert	Councilmember Sabby Jonathan, Vice Chair <i>Alternate: Mayor Kathleen Kelly</i>
City of Palm Springs	Councilmember Geoff Kors, Chair <i>Mayor Pro Tem Lisa Middleton</i>
<b>DCE Staff</b>	
Tom Kirk, Executive Director	
Katie Barrows, Director of Energy & Environmental Resources	
Benjamin Druyon, Management Analyst	
Valdemar Galeana, Accounting Manager	
Trisha Stull, Program Assistant II	



## **ITEM 5A**

### **Desert Community Energy Board**

#### **Meeting Minutes**

**November 16, 2020**

**2:30 pm**

**Held via Zoom videoconference**



*The audio file for this meeting can be found at: <http://www.desertcommunityenergy.org>*

#### **1. CALL TO ORDER**

The meeting of the DCE Board was called to order by Chair Geoff Kors, City of Palm Springs, at 2:31 p.m. via Zoom videoconferencing, which was pursuant to Gov. Newsom's executive order governing how meetings are held during the COVID-19 pandemic.

#### **2. ROLL CALL**

Roll call was taken, and it was determined that a quorum was present.

##### **Members Present**

Mayor Geoff Kors, Chair

Mayor John Aguilar

Councilmember Sabby Jonathan, Vice Chair

##### **Agency**

City of Palm Springs

City of Cathedral City

City of Palm Desert

##### **DCE Staff & Consultants**

Katie Barrows

Benjamin Druyon

Valdemar Galeana

Erica Felci

Trisha Stull

Oscar Vizcarra

Peter Satin

Jaclyn Harr

Colin Cameron

Jeff Fuller

Bryon Vosburg

Don Dame

Brian Rix

The Energy Authority

The Energy Authority

The Energy Authority

The Energy Authority

DCE Consultant

Burke Rix Communications

##### **Others Present**

David Freedman

Shelley Kaplan

Kim Floyd

Patrick Tallarico

Community Advisory Committee

Community Advisory Committee

Community Advisory Committee

City of Palm Springs

#### **3. PUBLIC COMMENTS ON AGENDA ITEMS**

There were no public comments made on agenda items.

#### **4. BOARD MEMBER / DIRECTOR COMMENTS**

Mayor John Aguilar announced this would be his last DCE meeting due to the recent city council election. Mayor Kors, Councilmember Jonathan and Katie Barrows all expressed appreciation to Mayor Aguilar for his service on the DCE Board.

#### **5. CONSENT CALENDAR**

**IT WAS MOVED BY COUNCILMEMBER JONATHAN AND SECONDED BY MAYOR AGUILAR TO:**

**A. Approve Minutes from Board Meeting of September 21, 2020 with revisions**

**B. Authorize the Executive Director to notify Southern California Edison by November 20, 2020, of DCE's intent to participate in SCE's Arrearage Management Plan**

**THE MOTION CARRIED WITH 3 AYES.**

<b>Mayor Aguilar</b>	<b>Aye</b>
<b>Councilmember Jonathan</b>	<b>Aye</b>
<b>Mayor Kors</b>	<b>Aye</b>

#### **6. DISCUSSION / ACTION**

**A. Financial Performance Update – Jaclyn Harr, The Energy Authority**

Jaclyn Harr, of The Energy Authority, updated the Board on DCE's recent financial performance and discussed possible options moving forward. Member discussion ensued.

No action was taken as this was an informational presentation.

**B. Establishment of Rate Stabilization Schedule – Don Dame, DCE Energy Consultant**

Don Dame, DCE Energy Consultant, discussed and recommended a rate stabilization schedule for DCE. Member discussion ensued. Mayor Kors proposed a modification to the recommendation presented in the staff report, in order to reflect rates over the course of a year. Additional discussion was held among members, and staff proposed language to reflect the Board direction.

**IT WAS MOVED BY COUNCILMEMBER JONATHAN AND SECONDED BY MAYOR AGUILAR TO ADOPT DCE RESOLUTION 2020-07 APPROVING A DCE RATE STABILIZATION SCHEDULE EFFECTIVE DECEMBER 1, 2020 AND INCORPORATING ADDITIONAL LANGUAGE TO UTILIZE A 12-MONTH CONTIGUOUS AVERAGE RATE COMPARISON PERIOD.**

**THE MOTION CARRIED WITH 3 AYES.**

<b>Mayor Aguilar</b>	<b>Aye</b>
<b>Councilmember Jonathan</b>	<b>Aye</b>
<b>Mayor Kors</b>	<b>Aye</b>

### **C. Residential Time-Of-Use Transition Bill Protection – Katie Barrows**

Katie Barrows discussed a rate change by Southern California Edison, which is transitioning customers to time-of-use rates and outlined a resolution to protect DCE customers who are automatically transitioned to these rates.

**IT WAS MOVED BY MAYOR AGUILAR AND SECONDED BY COUNCILMEMBER JONATHAN TO ADOPT RESOLUTION NO. 2020-08 TO ADOPT A 12-MONTH BILL PROTECTION FOR DCE RESIDENTIAL CUSTOMERS WHEN THEY ARE AUTOMATICALLY TRANSITIONED BY SOUTHERN CALIFORNIA EDISON TO TIME-OF-USE RATES.**

**THE MOTION CARRIED WITH 3 AYES.**

<b>Mayor Aguilar</b>	<b>Aye</b>
<b>Councilmember Jonathan</b>	<b>Aye</b>
<b>Mayor Kors</b>	<b>Aye</b>

### **D. Update on DCE Activities – Katie Barrows**

Katie Barrows provided an update on DCE's activities and community outreach and informed the Board of possible programs coming in the future.

No action was taken.

### **E. Legislative Update – Katie Barrows**

There was no legislative update.

## **7. INFORMATION**

### **A. Attendance Record**

### **B. Unaudited Financial Report for July 1 to October 31, 2020**

These items were placed on the agenda for the Board's information.

## **8. PUBLIC COMMENT ON NON-AGENDA ITEMS**

Shelley Kaplan thanked the Board for its work on DCE.

## **9. ANNOUNCEMENTS**

The next DCE meeting will be held December 21, 2020 at 2:30 p.m. via Zoom videoconference.

## **10. ADJOURN**

The meeting was adjourned at 3:35 p.m.

Respectfully submitted,

*Trisha Stull*

Desert Community Energy Board  
December 21, 2020



**STAFF REPORT**

**Subject:** City of Cathedral City Withdrawal from DCE

**Contact:** Tom Kirk, Executive Director ([tkirk@cvag.org](mailto:tkirk@cvag.org))

---

**Recommendation:** Confirm the decision of the City of Cathedral City to withdraw from Desert Community Energy, effective July 1, 2021

**Background:** The City of Cathedral City joined Desert Community Energy in August 2017, during the initial formation of the joint powers authority to launch a Community Choice Energy program in the region. On March 25, 2020, the City Council in Cathedral City discussed the program and the Council voted to withdraw from DCE (see Attachment 1). Under the provisions of the DCE Joint Powers Agreement, withdrawal of a member agency (Party) requires six-months advance notice. From Section 6.1.1:

*“Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of DCE’s next fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to DCE and each Party. Withdrawal of a Party shall require an affirmative vote of the Party’s governing board.”*

The provisions of the DCE Joint Powers Agreement provide that the withdrawal of a member agency takes effect at the start of the next fiscal year. For Cathedral City, that effective date is July 1, 2021. The City has requested confirmation from DCE of its decision to withdraw. Notice will also be given to the other member agencies.

DCE expresses appreciation to the City of Cathedral City for its participation in the program.

**Fiscal Analysis:** As noted in Cathedral City’s resolution, there are no financial obligations associated with the City’s membership in DCE through the date of withdrawal, July 1, 2021. No financial contribution to DCE was made by Cathedral City, other than the time that City staff and City Councilmembers provided as part of the City’s participation.

**Attachment:**

1. City of Cathedral City Resolution 2020-09



## **RESOLUTION NO. 2020-09**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, CALIFORNIA, WITHDRAWING PARTICIPATION IN THE DESERT CITIES ENERGY CHOICE AND THE DESERT CITIES ENERGY CHOICE JOINT POWERS AUTHORITY**

**WHEREAS**, Desert Cities Energy Choice is a Community Choice Aggregation Program; and

**WHEREAS**, The City of Cathedral City entered into a Joint Powers Agreement ("Agreement") joining the Desert Cities Energy Choice ("DCEC") Program on or about August 16, 2017, a true and correct copy of which is attached hereto as Exhibit "A"; and

**WHEREAS**, pursuant to Article 6.1 [Withdraw and Termination] Section 6.1.1 [Right to Withdraw], the City may withdraw its participation in the DCEC, effective as of the beginning of DCEC's next fiscal year, by giving no less than 6 months advance written notice; and

**WHEREAS**, the City, pursuant to the Agreement, may be subject to certain continuing financial obligations arising from the City's membership following withdrawal; and

**WHEREAS**, the Executive Director of the Coachella Valley Association of Governments confirmed the City shall not be subject to continuing financial obligations from inception through March 10, 2020; and

**WHEREAS**, there is no record of any claims, demands, damages or other financial obligations arising from the City's membership or participation in the DCEC from inception through March 10, 2020;

**WHEREAS**, the Executive Director of the Coachella Valley Association of Government further provided assurances that no claims, demands, damages or other financial obligations would be incurred through the effective date of withdrawal, July 1, 2021; and

**WHEREAS**, Withdrawal from the DCEC requires an affirmative vote of the City Council; and

**WHEREAS**, the City Council desires to adopt this Resolution, formally withdrawing the City's participation in the DCEC.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** Pursuant Section 6.1 of the Desert Cities Energy Choice Joint Powers Agreement, the City of Cathedral City hereby withdraws its membership and



participation in the Desert Cities Energy Choice Program and the Desert Cities Choice Joint Powers Authority.

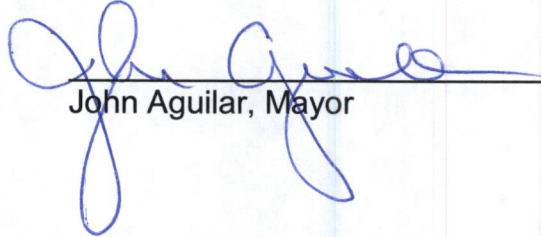
**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Cathedral City held on this 25<sup>th</sup> day of March, 2020, by the following vote:

Ayes: Councilmembers Lamb, Gutierrez and Carnevale; Mayor Pro Tem Gregory, and Mayor Aguilar

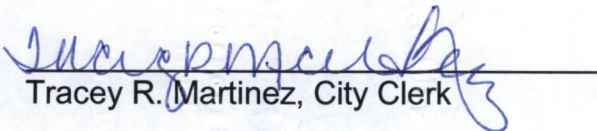
Noes: Mayor Aguilar

Absent: None

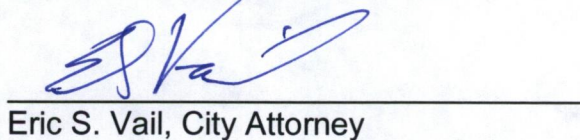
Abstain: None

  
\_\_\_\_\_  
John Aguilar, Mayor

ATTEST:

  
\_\_\_\_\_  
Tracey R. Martinez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric S. Vail, City Attorney

## Exhibit A



**ATTACHMENT 1:**  
**DESERT CITIES ENERGY CHOICE**  
*(placeholder, JPA name to be determined)*

**JOINT POWERS AGREEMENT**

This Joint Powers Agreement ("Agreement"), effective as of September 9, 2017 is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B (individually "Party" or "Member", collectively "Parties" or "Members"). The term "Parties" or "Members" shall also include an incorporated municipality or county added to this Agreement in accordance with Section 2.4.

**RECITALS**

- A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.
- B. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. In 2016, the Legislature passed SB 32, which codifies a 2030 greenhouse gas emissions reduction target of 40 percent below 1990 levels.
- C. The purposes for entering into this Agreement include:
  - a. Reducing greenhouse gas emissions related to the use of power throughout the jurisdictions of the Parties and neighboring regions;
  - b. Providing electric power and other forms of energy to customers at a competitive cost;
  - c. Carrying out programs to reduce energy consumption;
  - d. Stimulating and sustaining the local economy by developing local jobs in renewable and conventional energy; and
  - e. Promoting long-term electric rate stability, energy security and reliability for residents through local control of electric generation resources.
- D. It is the mission and purpose of this Agreement to build a Community Choice Aggregation program that is locally controlled and delivers cost-competitive clean electricity, product choice, price stability, energy efficiency and greenhouse gas emission reductions.
- E. It is the intent of this Agreement to promote the development and use of a wide range of renewable and efficient energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be



the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible. The DCEC will also add increasing levels of locally generated renewable resources as these projects are developed and customer energy needs expand.

- F. The Parties desire to establish a separate public agency, known as the Desert Cities Energy Choice, or DCEC, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
- G. The Parties anticipate adopting an ordinance electing to implement through the DCEC a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(b) and 366.2. The first priority of the DCEC will be the consideration of those actions necessary to implement the CCA Program.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

### **ARTICLE 1: DEFINITIONS AND EXHIBITS**

- 1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A:	Definitions
Exhibit B:	List of the Parties
Exhibit C:	Annual Energy Use
Exhibit D:	Voting Shares
Exhibit E:	Signatures

### **ARTICLE 2: FORMATION OF DESERT CITIES ENERGY CHOICE**

- 2.1 Effective Date and Term. This Agreement shall become effective and DCEC shall exist as a separate public agency on \_\_\_\_\_, 2017 or when the Parties execute this Agreement, whichever occurs later. The DCEC shall provide notice to the Parties of the Effective Date. DCEC shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from DCEC.
- 2.2 Formation. There is formed as of the Effective Date a public agency named Desert Cities Energy Choice. Pursuant to Sections 6506 and 6507 of the Act, DCEC is a public agency separate from the Parties. Pursuant to Sections 6508.1



of the Act, the debts, liabilities or obligations of DCEC shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of DCEC. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of DCEC. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.2.1 Name. DCEC may change its name at any time through adoption of a resolution of the Board of Directors.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to build a Community Choice Aggregation program that achieves significant, long-term GHG emission reductions by offering clean, cost effective and price stable electricity to residents, businesses, and agricultural producers while carrying out innovative programs to reduce customer energy use, and to promote local renewable and efficient energy production technologies. To that end, DCEC will study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by DCEC.

2.4 Membership in DCEC.

2.4.1 The initial Members of DCEC are the Cities of Blythe, Cathedral City, Desert Hot Springs, Indian Wells, Palm Desert, and Palm Springs.

2.4.2 Any city or county may request to become a member of DCEC by submitting a resolution adopted by its City Council or Board of Supervisors to the Board of DCEC. The Board shall review the request and shall vote to approve or disapprove the request. The Board may establish conditions, including but not limited to financial conditions, under which the city or county may become a member of DCEC. The Board shall notify the then members of DCEC of this request and the date that the request will be on the Board's meeting agenda for action. The date set for Board action shall be at least forty-five (45) days from the date the notice is mailed to the members. If the request is approved by the Board, the city or county shall become a member of DCEC under

the terms and conditions set forth by the Board and upon approval and execution of this Agreement by the requesting city or county.



2.5 Powers. DCEC shall have all powers common to the Parties and such additional powers accorded to it by law. DCEC is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.17:

- 2.5.1 to make and enter into contracts;
- 2.5.2 to employ agents and employees, including but not limited to an Executive Officer;
- 2.5.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;
- 2.5.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, DCEC shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith;
- 2.5.5 to lease any property;
- 2.5.6 to sue and be sued in its own name;
- 2.5.7 to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;
- 2.5.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;
- 2.5.9 to issue revenue bonds and other forms of indebtedness;
- 2.5.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- 2.5.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 2.5.12 to adopt Operating Rules and Regulations;
- 2.5.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services; and



2.5.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate DCEC to act as the community choice energy aggregator on its behalf.

- 2.6 Limitation on Powers. As required by Government Code Section 6509, the power of DCEC is subject to the restrictions upon the manner of exercising power possessed by the City of (insert name of one participating city).

### **ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION**

- 3.1 Governing Body. DCEC shall be governed by a legislative body known as the Board of Directors ("Board"). The initial Board shall consist of one (1) director appointed by each of the initial members. Each Director shall serve at the pleasure of the governing board of the Party appointing such Director, and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 60 days of the date that such position becomes vacant. Directors shall be elected officials or senior staff of the appointing Party that is the signatory to this Agreement. Each Party may appoint an alternate to serve in the absence of its Director. Alternates may be either elected officials or senior staff of the appointing Party that is the signatory to this Agreement. The Board shall exercise all powers and conduct all business of DCEC, either directly or by delegation to other bodies or persons pursuant to this Agreement.

If additional cities or counties join DCEC, as set forth in section 2.4, each city or county that becomes a member of DCEC shall be entitled to one (1) director and one (1) alternate appointed as set forth above.

Ex Officio Directors. The Board may appoint ex officio members of the Board. Ex officio directors shall receive all meeting notices, shall have the right to participate in Board discussions and the right to place items on the agenda but shall not be counted towards a quorum and shall have no vote.

- 3.2 Regular Board Meetings. The Board shall hold at least one regular annual meeting and shall provide for such other regular meetings as it deems necessary. Meetings of the Board shall be held at such locations within one of the member jurisdictions, and at such times as may be designated from time to time by the Board. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).
- 3.3 Special Meetings of the Board. Subject to all noticing requirements of the Ralph M. Brown Act, special meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5, to be held at such times and places within one of the member jurisdictions as may be ordered by the Chair. A majority of the Board may also call a special meeting for any purpose.



- 3.4 Chair and Vice-Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Chair and Vice Chair shall serve at the pleasure of the Board. There shall be no limit on the number of terms held by either the Chair or Vice Chair.
- 3.5 Conduct of Meetings. The Chair or, in the absence of the Chair, the Vice-Chair, shall preside at all meetings of the Board.
- 3.6 Resignation of a Director. Any Director may resign effective on giving written notice to the Board and the other Members, unless the notice specifies a later time for the effectiveness of such resignation. A successor shall be appointed by the affected Member as provided for in this Agreement.
- 3.7 Quorum. Except as otherwise provided in this Agreement, every act or decision by the Board shall be made by a majority vote of the Directors present at a meeting duly held at which a quorum is present. No action may be taken by the Directors if a quorum of the Board is not present. In the absence of a quorum, any meeting of the Board may be adjourned from time to time by a vote of the majority present, but no other business may be transacted except as provided for in this Section.

A quorum shall exist if a majority of the Directors then designated by and serving on behalf of the Members are present at any duly called meeting of the Board. Ex officio, non-voting directors shall not be included when calculating the number of Directors necessary to constitute a quorum or the number of votes necessary to approve an action. In the event that a Member has failed to designate a Director, or a Member's designated Director has died, resigned, left office, been terminated or is otherwise unwilling or unable to act as the designating Member's representative, and a replacement Director has not yet been designated, and there is no designated alternate, such that a Member has no duly acting representative on the Board, then that Member's vacant Board position shall not be included when calculating the number of Directors necessary to constitute a quorum or the number of votes necessary to approve an action.

- 3.8 Other Officers. The Executive Officer of DCEC shall be the secretary of DCEC, or as otherwise determined by the Board. Any officer, employee or agent of any Member of DCEC may also be an officer, employee, or agent of any of the Members. DCEC shall have the power to appoint such additional officers and to employ such employees and assistants as may be appropriate. Each and all of said officers, employees and assistants shall serve at the pleasure of DCEC and shall perform such duties and shall have such powers as DCEC may, from time to time, determine. Any officer may resign at any time by giving written notice to the secretary. Any such resignation shall be effective upon receipt of such notice or at any later time specified in the notice. Officers shall assume the duties of their offices immediately after their appointment and shall hold office until their successors are appointed, except in the case of their removal or resignation. Vacancies of officers shall be filled by appointment of the Board and such appointee shall hold office until the appointment of his or her successor.



- 3.9 Minutes. The secretary of DCEC shall cause to be kept minutes of regular, adjourned regular and special meetings of the Board. The secretary shall cause a copy of all minutes, along with copies of all ordinances and resolutions, to be forwarded to each of the Parties hereto.
- 3.10 Rules. A majority of Directors may adopt rules governing meetings if not inconsistent or in conflict with this Agreement. In the absence of rules adopted by the Directors, Roberts' Rules of Order, as they may be amended from time to time, shall govern the meetings of the Board in so far as they are not inconsistent or in conflict with this Agreement or any DCEC bylaws.
- 3.11 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of DCEC, consistent with this Agreement and applicable law. The Board shall provide general policy guidance to the CCA Program. Board approval shall be required for any of the following actions:
- 3.11.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
  - 3.11.2 The appointment or termination of the Executive Officer and General Counsel.
  - 3.11.3 The appointment or removal of officers described in Section 3.17, subject to Section 3.17.1.
  - 3.11.4 Any decision to provide retirement or post-retirement benefits that are defined benefit programs, subject to the requirements of section 5.3.4, below.
  - 3.11.5 The adoption of the Annual Budget.
  - 3.11.6 The adoption of an ordinance.
  - 3.11.7 The approval of agreements, except as provided by Section 3.12.
  - 3.11.8 The initiation or resolution of claims and litigation where DCEC will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner, or intervenor; provided, however, that the Executive Officer or General Counsel, on behalf of DCEC, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.
  - 3.11.9 The setting of rates for power sold by DCEC and the setting of charges for any other category of service provided by DCEC.
  - 3.11.10 Termination of the CCA Program.



- 3.12 CVAG's Participation. CVAG shall provide, under contract with DCEC, administrative services required by DCEC during the first five (5) years of the implementation of the DCEC; and thereafter as the administrative services contract may be renewed from time to time by DCEC, and shall exercise such other powers and duties as the Board deems necessary to achieve the purpose of this Agreement. During any such term, CVAG's Executive Director may serve as the secretary of DCEC.
- 3.13 Executive Officer. Except as may be provided pursuant to any administrative services agreement referenced in Section 3.12, the Board of Directors shall have the authority to appoint an Executive Officer for DCEC, who shall be responsible for the day-to-day operation and management of DCEC and the CCA Program. The Executive Officer may be retained under contract with DCEC, be an employee of DCEC, be an employee of CVAG, or be an employee of one of the Parties. The Executive Officer shall report directly to the Board and serve as staff to DCEC. Except as otherwise set forth in this Agreement, the Executive Officer may exercise all powers of DCEC, including the power to hire, discipline and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is less than \$100,000 in any fiscal year, or such higher amount as may be established by the Board from time to time, by resolution of the Board, except the powers specifically set forth in Section 3.11 or those powers which by law must be exercised by the Board of Directors. The Executive Officer shall serve at the pleasure of the Board.
- 3.14 DCEC Staff. Except as may be provided pursuant to any administrative services agreement referenced in Section 3.12, DCEC may contract with CVAG for staff services, retain its own staff, or contract with another entity for services. Unless other employment is approved by the Commission, the DCEC Executive Officer may utilize CVAG staff as may be necessary to accomplish the purposes of DCEC. CVAG staff time, as well as office expenses, direct and indirect overhead, shall be charged to DCEC utilizing direct billing and other accounting practices that provide for a clear separation of funds.
- 3.15 Commissions, Boards, and Committees
- 3.15.1 The Board may establish commissions, boards or committees, including but not limited to a standing executive committee of the Board, as the Board deems appropriate, to assist the Board in carrying out its authority and functions under this Agreement and may delegate authority to such commissions, boards or committees as set forth in a Board resolution. Such delegation may be modified, amended or revoked at any time the Board may deem appropriate. Any decision delegated pursuant to this subsection may be appealed to the Board, as the Board so determines.
- 3.15.2 The Board may also establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.
- 3.15.3 Any board, commission or committee formed under this section shall comply with the requirements of the Ralph M. Brown Act. The Board



may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

- 3.16 Director Compensation. Directors shall serve without compensation from DCEC. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by DCEC of expenses or other costs incurred by Directors.
- 3.17 Voting. As described in Section 3.7 and in Section 3.17.3, action by DCEC Board will be taken solely by a majority vote of the total number of Directors present except as provided in Section 3.17.5 below. In addition, as described in Section 3.17.4, upon request of two (2) Directors, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the Weighted Voting Shares present. No action may be approved solely by a majority vote by shares. The voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.17.1 Weighted Voting Shares

Each member agency shall have a Voting Share as determined by the following formulas:

- (a) Pro Rata Voting Share. Each Member shall have an equal voting share determined by the following formula: (  $1 / \text{total number of Members}$  ) multiplied by  $\frac{1}{2}$  ), expressed as a percentage to two decimal places; and
- (b) Annual Energy Voting Share. Each Member shall have an additional voting share determined by the following formula: (  $\text{Total Annual Energy Use (expressed in MWh) in the Member's jurisdiction} / \text{combined Total Annual Energy Use in all Members' jurisdictions}$  ) multiplied by  $\frac{1}{2}$  ), expressed as a percentage to two decimal places. Annual Energy Use values are to be based on total CCA-related retail energy sales of all electric customer accounts as of December 31 of the most recent year for which such data is available. In the absence of actual data, the Board may approve the use of reasonably estimated Annual Energy Use values.
- (c) Weighted Voting Share. Each Member's Weighted Voting Share shall be the respective sum of the values computed in (a) and (b) above, expressed as a percentage to two decimal places. The combined total Weighted Voting Shares of all Members is 100.00 percent.



- 3.17.2 Exhibit Showing Weighted Voting Shares. The initial Weighted Voting Shares are set forth in Exhibit D based on data available as of the Effective Date of this Agreement. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Members and or changes in the Members' annual MWh retail energy usage. Adjustments to Exhibit D shall be approved by the Board.
- 3.17.3 Action Approval Requirements. Except as provided in Sections 3.17 and 3.17.4 and 3.17.5, the Board shall act solely upon the affirmative vote of a majority of Directors present at the meeting.
- 3.17.4 Option for Approval by Voting Shares. Notwithstanding Section 3.17.3, any two (2) Directors present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both Weighted Voting Shares and by the affirmative vote of a majority of Directors present at the meeting. If two Directors make such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of Weighted Voting Shares present, as determined by Section 3.17.1 except as provided in Section 3.17.5.
- 3.17.5 Special Voting Requirements for Certain Matters.
- (a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.4. Notwithstanding any other provision of this Agreement, action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Member), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that: (i) notwithstanding the foregoing, any two (2) Directors present at a meeting may demand that the vote be determined on the basis of both Weighted Voting Shares and by the affirmative vote of Directors present, and if any two (2) Directors make such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the Weighted Voting Shares present, as determined by Section 3.17.1; and (ii) for votes to involuntarily terminate a Member under Section 6.2, the Director for the Member subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the Weighted Voting Share of each Member shall be recalculated as if the Member subject to possible termination were not a Member.
  - (b) Seventy-Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.
    - (i) A decision to exercise the power of eminent domain on behalf of DCEC to acquire any property interest other than an easement, right-of-way, or temporary construction



easement shall require a vote of at least 75% of all Directors.

- (ii) The imposition on any Member of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Members which are being asked to make such contribution or pledge.
- (iii) Notwithstanding the foregoing, any two (2) Directors present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of Weighted Voting Shares and by the affirmative vote of Directors, and if any two (2) Directors make such a demand, then approval shall require both the affirmative vote of at least 75% of all Directors and the affirmative vote of Directors having at least 75% of all Weighted Voting Shares, as determined by Section 3.17.1. For purposes of this section, "imposition on any Member of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any obligations of a withdrawing or terminated Member imposed under Section 6.3.

3.18 Treasurer and Auditor. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government code section 6505.6 and shall strictly comply with the statutes related to the duties and responsibilities specified in Section 65.5 of the Act. The Treasurer for DCEC shall be the depository and have custody of all money of DCEC from whatever source and shall draw all warrants and pay demands against DCEC as approved by the Board. The Treasurer shall cause an independent audit(s) of the finances of DCEC to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5. The Treasurer shall serve at the pleasure of the Board.

3.19 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as DCEC's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board. The appointed administrative services provider may be one of the Members, or CVAG as provided in Section 3.12. A separate services agreement shall set forth the terms and conditions by which the appointed administrative services provider(s) shall perform or cause to be performed tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. Any such services agreement shall set forth the terms and the circumstances under which the services agreement may be terminated by DCEC. This section shall not in



any way be construed to limit the discretion of DCEC to hire its own employees to administer all or any portion of the CCA Program or any other program.

#### **ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS**

##### **4.1 Preliminary Implementation of the CCA Program.**

4.1.1 **Enabling Ordinance.** To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in DCEC.

4.1.2 **Implementation Plan.** DCEC shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.17.

4.1.3 **Termination of CCA Program.** Nothing contained in this Article or this Agreement shall be construed to limit the discretion of DCEC to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 **Authority Documents.** The Parties acknowledge and agree that the affairs of DCEC will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from DCEC as described in Article 6.

#### **ARTICLE 5: FINANCIAL PROVISIONS**

5.1 **Fiscal Year.** DCEC's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

##### **5.2 Depository.**

5.2.1 All funds of DCEC shall be held in separate accounts in the name of DCEC and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of DCEC shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of DCEC shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of



DCEC, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

- 5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

- 5.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of DCEC shall be approved by the Board in accordance with the Operating Rules and Regulations.

- 5.3.2 Funding of Initial Costs. The Parties acknowledge that implementing the CCA Program will require some form of funding either provided by all or some of the Parties or attained in some other manner. If the CCA Program becomes operational, these Initial Costs paid by such Parties or attained from other sources shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and respective Parties or other sources shall be reimbursed from the payment of such charges by customers of DCEC. CVAG shall also be entitled to reimbursement for Initial Costs. DCEC may establish a reasonable time period over which such costs are recovered and repaid to respective Parties or other sources. In the event that the CCA Program does not become operational, respective Parties shall not be entitled to any reimbursement of the funded Initial Costs from DCEC or any Party. If any of the initial member agencies or other sources assists in funding initial costs, they shall also be entitled to reimbursement pursuant to this section. The Board shall approve the manner of funding and repayment of initial CCA program costs which may include reasonable interest charges.

- 5.3.3 CCA Program Costs. The Parties desire that all costs incurred by DCEC that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources, to the extent permitted by law.

- 5.3.4 Employee Retirement and Post-retirement Benefits. Should the Board determine to provide a defined benefits retirement benefit to DCEC employees (such as PERS) or other post-retirement benefits that would



be within an Other Post-Retirement Benefits (OPEB) obligation to DCEC employees, prior to providing such benefit(s) to any employee, the Board shall (1) obtain a third party independent actuarial report on the long term costs of the benefit or benefits, (2) adopt a funding plan for the payment of both current and long-term costs that provides for the payment of all such costs on a current, pay-as-you-go, basis and eliminates any known or reasonably anticipated unfunded liability associated with the benefit(s) and (3) notice all Member agencies of the pending consideration of the benefit(s) together with the actuarial report and funding plan, for at least sixty (60) days and obtain the consent, by resolution of not less than 75 percent of the then current Member agency boards or councils

## **ARTICLE 6: WITHDRAWAL AND TERMINATION**

### **6.1 Withdrawal.**

- 6.1.1 **Right to Withdraw.** A Party may withdraw its participation in the CCA Program, effective as of the beginning of DCEC's next fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to DCEC and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.
- 6.1.2 **Right to Withdraw After Amendment.** Notwithstanding Section 6.1.1, a Party may withdraw its membership in DCEC following an amendment to this Agreement adopted by the Board which the Party's Director voted against, provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.
- 6.1.3 **The Right to Withdraw Prior to Program Launch.** After receiving bids from power suppliers, DCEC shall provide to the Parties the report from the electrical utility consultant(s) retained by DCEC that compares the total estimated electrical rates that DCEC will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility (SCE). If the report provides that DCEC is unable to provide total electrical rates, as part of its baseline offering, to customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in DCEC without any further financial obligation, as long as the Party provides written notice of its intent to withdraw to DCEC Board no more than fifteen (15) days after receiving the report. A Party may also withdraw its membership in DCEC prior to December 31, 2017 for any reason. Any withdrawing Party shall not be entitled to any return of funds it may have provided to DCEC, provided, however, that if, after the program is launched there are unobligated and unused funds, the



withdrawing member shall be refunded its pro rata share of the unobligated and unused funds.

- 6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and DCEC shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.
- 6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.17.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least thirty (30) days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.
- 6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from such Party's membership or participation in the CCA Program through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any new financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by DCEC to serve the Party's load and any unfunded liabilities such as unfunded retirement contributions or costs and any unfunded post-retirement benefits. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, DCEC shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or



obligations were incurred prior to the withdrawal of the Party. DCEC may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with DCEC, as reasonably determined by DCEC and approved by a vote of the Board, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with DCEC above that which is required to pay any existing or ongoing financial obligations shall be returned to the Party. If there is a disagreement related to the charge(s) for exiting, the Parties shall attempt to settle the amount through mediation or other dispute resolution process as authorized by section 7.1. If the dispute is not resolved, the Parties may agree to proceed to arbitration, or any party may seek judicial review. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

- 6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.
- 6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of DCEC for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

#### **ARTICLE 7: MISCELLANEOUS PROVISIONS**

- 7.1 Dispute Resolution. The Parties and DCEC shall make reasonable efforts to informally settle all disputes arising out of or in connection with this Agreement. Should such informal efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.
- 7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of DCEC shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. DCEC shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, DCEC, or its Directors, officers, or employees
- 7.3 Indemnification of Parties. DCEC shall acquire such insurance coverage as is necessary to protect the interests of DCEC, the Parties, and the public. Subject to the provisions of Section 7.4 and provided that a Party has acted in good faith and in accordance with this Agreement, DCEC shall defend with counsel acceptable to said Party, indemnify and hold such Party free and harmless from



any loss, liability or damage incurred or suffered by such Party by reason of litigation arising from or as a result of any of the following: the Party's participation in the JPA; action taken to approve and/or implement the CCA; or any other act performed or to be performed by the Party pursuant to this Agreement; provided, however that such indemnification or agreement to hold harmless pursuant to this section shall be recoverable only out of DCEC assets and not from other Parties. To the extent DCEC's assets are insufficient to satisfy its obligations under this Section, any member Agency forced to expend its own funds to satisfy what would otherwise be DCEC's obligations shall be entitled to reimbursement from DCEC.

- 7.4 Limitations on Liability. The Parties acknowledge that Section 895.2 of the California Government Code provides that a Member is jointly and severally liable for the torts of the joint powers agency, but that Sections 895.4 and 895.6 of that Code allow the members of a joint powers agency to contractually agree to indemnify and contribution provisions that allow such liability to be apportioned among the members based on their respective degree of fault giving rise to the liability. The Parties further acknowledge that they have agreed at Section 7.3 above to indemnify and defend those Member agencies against loss, liability or damage suffered by a Member Agency individually as a result of that Agency's good faith acts taken pursuant to this Agreement. Now, therefore, in contemplation of such authority, the Parties agree that, as among themselves, each shall assume that portion of the liability imposed upon DCEC or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement that is not covered by insurance, that is determined by the DCEC to be that Member's proportionate share accruing during the Member's period of participation in DCEC. Said determination shall be by three-fourths vote of the Member Agencies, meaning an affirmative vote of three-fourths of the total number of Member Agencies. The Members acknowledge that, given the possible variables, determination of a proper apportionment may be difficult. Therefore, subject only to arbitration rights set out at Section 6.3, the Members agree that the Board's good faith determination of a fair apportionment shall be final, binding and enforceable as a term of this Agreement. Each Member shall to the extent provided herein indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Section 895.2.
- 7.5 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 3.17.5. DCEC shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments. Exhibits A through E of this Agreement may be revised from time to time by Board vote and copies of such revised exhibits shall be distributed to all Parties.
- 7.6 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the



successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to DCEC, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of DCEC or the Parties under this Agreement.

- 7.7 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.
- 7.8 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.
- 7.9 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.
- 7.10 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of DCEC or Party, as the case may be, or such other person designated in writing by DCEC or Party. Notices given to one Party shall be copied to all other Parties. Notices given to DCEC shall be copied to all Parties.
- 7.11 No Third Party Beneficiaries. This Agreement shall reflect the Parties' rights and obligations as by and among themselves. Nothing herein shall create any right in any third party to enforce any right or obligation set out in this Agreement as against any Party hereto.



## **EXHIBIT A DEFINITIONS**

1. "Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.)
2. "Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by DCEC with one or more entity that will perform tasks necessary for planning, implementing, operating and/or administering the CCA Program, or any portion of the CCA Program or any other energy programs adopted by DCEC.
3. "Agreement" means this Joint Powers Agreement.
4. "Annual Energy Use" has the meaning given in Section 3.17.1(b).
5. "Authority" means the DCEC.
6. "Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of DCEC, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.
7. "Board" means the Board of Directors of DCEC.
8. "CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.
9. "CCA Program" means DCEC's program relating to CCA that is principally described in Article 2 of this Agreement.
10. "CVAG" shall mean the Coachella Valley Association of Governments.
11. "Director" means a member of the Board of Directors appointed by and representing a Party.
12. "Effective Date" means \_\_\_\_\_, 2017 or when initial members of DCEC execute this Agreement, whichever occurs later, as further described in Section 2.1.
13. "Implementation Plan" means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.
14. "Initial Costs" means all costs incurred by the DCEC and or any Parties relating to the establishment and initial operation of DCEC, such as the hiring of an Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of DCEC's initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

15. "Operating Rules and Regulations" means one or more sets of rules, regulations, policies, bylaws and procedures governing the operation of DCEC.
16. "Parties" or "Members" means, collectively, the signatories to this Agreement.
17. "Party", "Member" or "Member Agency" means a signatory to this Agreement.
18. "Total Annual Energy Use" has the meaning given in Section 3.17.1(b).



**EXHIBIT B  
LIST OF PARTIES**

**Parties:**      City of Blythe  
                    City of Cathedral City  
                    City of Desert Hot Springs  
                    City of Indian Wells  
                    City of Palm Desert  
                    City of Palm Springs

**EXHIBIT C**  
**PRO FORMA**  
**ANNUAL ENERGY USE**

<b>Member</b>	<b>Number of Customers</b>	<b>Annual Energy Use (MWh)</b>
Blythe	5,898	117,000
Cathedral City	24,137	329,000
Desert Hot Springs	11,421	140,000
Indian Wells	5,230	158,000
Palm Desert	39,459	699,000
Palm Springs	37,826	640,000
<b>Total</b>	<b>123,971</b>	<b>2,083,000</b>



**EXHIBIT D**

**PRO FORMA**  
**VOTING SHARES**

<b>CVCEA CCA Program Participation and Weighted Voting Shares</b>					
<b>Participants</b>	<b>Annual Energy Use (MWh)</b>	<b>Percent Annual Energy Use</b>	<b>Annual Energy Use Voting Share %</b>	<b>Pro Rata Voting Share %</b>	<b>Weighted Voting Share %</b>
Blythe	117,000	5.62%	2.81%	8.33%	11.14%
Cathedral City	329,000	15.79%	7.90%	8.33%	16.23%
Desert Hot Springs	140,000	6.72%	3.36%	8.33%	11.69%
Indian Wells	158,000	7.59%	3.79%	8.33%	12.13%
Palm Desert	699,000	33.56%	16.78%	8.33%	25.11%
Palm Springs	640,000	30.72%	15.36%	8.33%	23.70%
<b>TOTALS</b>	<b>2,083,000</b>	<b>100.00%</b>	<b>50.00%</b>	<b>50.00%</b>	<b>100.00%</b>

1. [

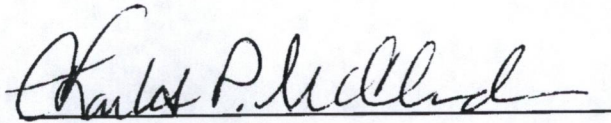
**FORMULAS USED:**

1. Annual Energy Use Voting Share: Total Annual Energy Use (expressed in MWh) in the Member's jurisdiction / combined Total Annual Energy Use all Members' jurisdictions] multiplied by ½), expressed as a percentage to two decimal places. See section 3.17.1 (b)
2. Pro-rata Voting Share: [1 / total number of members] multiplied by ½), expressed as a percentage to two decimal places. See section 3.17.1 (a)
3. Weighted Voting Share: [the respective sum of the values computed in (1) and (2) above, expressed as a percentage to two decimal places. See section 3.17.1 (c)

**EXHIBIT E**  
**SIGNATURES**

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Desert Cities Energy Choice, Community Choice Aggregation program.

By:



Name:

Charles P. McClendon

Title:

City Manager

Date:

August 16, 2017

Party:

Cathedral City

(One signature page for each Member)

## **Item 6A**

### **Desert Community Energy Board December 21, 2020**



#### **STAFF REPORT**

**Subject:** DCE Long Term Renewable Energy Procurement

**Contact:** Jaclyn Harr, The Energy Authority

---

**Recommendation:** Adopt Resolution 2020-09, approving three, 15-year power purchase agreements with Terra-Gen, LLC, and authorize the Executive Director and/or Legal Counsel to make minor modifications before execution of the agreements

**Background:** In May 2020, DCE launched its first Request for Offers (RFO) for DCE's Long Term Renewable Energy requirements. DCE received a good response, with 11 firms submitting offers for renewable wind, solar and solar plus storage projects. At the July 2020 meeting, the DCE Board approved a shortlist of firms and authorized staff from DCE and The Energy Authority (TEA) to proceed with contract negotiations. DCE and TEA staff begun negotiations with three firms: Terra-Gen, LLC for wind energy projects, and Vesper Energy (formerly Lendlease Energy Development) and Clearway Renew for solar plus storage projects. Since then, negotiations were terminated with Clearway Renew due to changes that were not consistent with criteria in the RFO. Negotiations with Vesper are in progress and staff expects to bring a contract for Board consideration in early 2021.

With this item, staff is recommending approval of DCE's first long-term contracts in the form of power purchase agreements (PPA) with Terra-Gen for three projects located in Palm Springs – East Wind, Coachella Hills Wind II, and Altwind. These PPAs will help DCE meet its long-term contracting compliance requirements, its broader Renewables Portfolio Standard (RPS) procurement requirements, as well as its program goals of building a carbon free and significantly renewable energy resource mix. The procurement will also give DCE customers a more cost-effective source of renewable power than buying on the short-term market. And the energy is supplied from projects in our local community.

The renewable procurement that these PPAs represent will meet the requirements for load-serving entities – DCE and other CCAs and Investor-Owned Utilities – to procure at least 65% of their required RPS energy under long-term contracts. This procurement is required by SB 350 and starts with California's fourth RPS compliance period (2021-2024). At present, none of DCE's contracted portfolio meets this long-term contract requirement.

The three projects are all located within the city limits of Palm Springs (see Attachment 1). The following table shows the three Terra-Gen projects and provides summary information about each project. The projects are located on the Whitewater floodplain west of Indian Avenue.



Developer	Project	Technology	Proposed Size	Contract Start Date / Term	Annual Energy Delivery	Location
Terra-Gen	East Wind	Existing Wind	12.6 MW	Q4 2022 / 15 years	34 GWh	Palm Springs
Terra-Gen	Coachella Hills Wind II	New Wind	10.6 MW	Q1 2021 / 15 years	36 GWh	Palm Springs
Terra-Gen	Altwind	Existing Wind	9.8 MW	Q4 2022 / 15 years	28 GWh	Palm Springs

Terra-Gen, LLC is a leading developer, owner, and operator of renewable energy projects that has been operating since 2008. Terra-Gen specializes in development, construction and operation of utility-scale wind, solar, energy storage as well as geothermal generation facilities. With offices in New York, San Diego, and Reno, the Terra-Gen team has contracted or re-contracted over 10,000 MW of power generation facilities and has developed or acquired over \$25 billion in assets over their careers. Terra-Gen's approach is to own and operate and as such, plant personnel will be Terra-Gen Operating Company (TGOC) employees. The company has strong local ties: TGOC has been operating wind projects in the Tehachapi-Mojave and Palm Springs area since 1998 and currently operates twenty wind projects with a total capacity of 1,739 MW in the Tehachapi-Mojave and Palm Springs areas. It maintains permanent staff at several warehouse and operating centers in the Tehachapi/Mojave and Palm Springs areas. Terra-Gen uses subcontractors as necessary from time to time for specialty work.

The negotiations with Terra-Gen focused on ensuring that the projects to be included in DCE's portfolio are in line with the criteria outlined in the RFO materials, including:

- the overall value to DCE customers;
- the respondent experience, qualifications, and creditworthiness;
- the environmental impacts and benefits of the proposed projects;
- the project's location and economic impacts/benefits to the local community; and
- conformance to DCE's preferred contractual terms.

A DCE-specific PPA prepared by TEA and DCE legal counsel was provided to the short-list firms for their review. Negotiations involved TEA taking the lead, with DCE staff and legal counsel from Best Best & Krieger participating in negotiations.

DCE's form PPA, from which negotiations with Terra-Gen began, generally followed well-established industry norms with respect to wind energy PPAs. Changes in the form have been relatively light during negotiations. Two significant changes to DCE's form PPA – both overall favorable to DCE's customers – have been included in the three PPAs with Terra-Gen:

- **Financial Settlement at the Hub** – DCE will off-take the renewable power produced by these wind projects at their point of interconnection to the larger California transmission system. Interconnection points are represented financially via "pricing nodes" or pnodes

in the California Independent System Operator's (CAISO) modelling of the transmission system, and the prices for energy at these nodes can be volatile due to congestion. In order to reduce DCE's exposure to these wind projects' node price volatility, DCE is paying a slight premium to have the PPAs settled financially at the SP-15 Trading Hub, which is significantly steadier in pricing as well as more closely tracking the pricing node at which DCE's load is financially settled (the SCE Default Load Aggregation Point or SCE-DLAP).

- **Seller Provides Scheduling Coordinator (SC) Services** – Every utility-scale generating resource operating in the CAISO must have an SC to perform critical services which can occur on a 24/7 basis, including scheduling and dispatching the facility, managing outages, and settlement activities. TEA currently provides SC services to DCE for DCE's load, and it was initially planned that TEA would be providing SC services for any projects procured as part of this RFO in order to allow DCE to optimize the performance of its new resources in the CAISO market. However, due to dispatch operational limitations of the three Terra-Gen projects – particularly the two older existing facilities – there is very limited optimization available to any SC of these projects, and some potential financial risk to the entity providing the SC services. These PPAs are therefore structured to have Terra-Gen or its designated agent provide SC services, while still allowing DCE to provide a limited amount of dispatch instructions for the limited optimization that is possible for the facilities.

In addition to meeting DCE's compliance requirements, executing renewable PPAs are an important step forward in meeting DCE's program objectives: supplying DCE customers with a carbon-free and highly renewable energy mixture, including local renewable projects. This procurement process focuses on a fiscally prudent approach that reduces price volatility in DCE's power portfolio, which will allow for increased rate certainty. These three PPAs will help meet DCE goals by:

- Locking-in significant portion of energy costs for increased rate certainty;
- Providing an estimated \$7 million to \$10 million in cost-savings compared to equivalent purchases over the lifetime of the PPAs;
- Partnering with a local developer;
- Helping build new incremental renewables in California;
- Generating 5 to 6 permanent jobs and up to 180 temporary jobs locally;
- Contracting with one of the most suitable renewable energy technology types for DCE's program goals.

Staff recommends approval of the three Terra-Gen agreements. In moving forward with these local projects, DCE will add to the collective efforts of other Community Choice Aggregation (CCA) programs across the state in a trend of exercising their buying power and driving new renewable energy development. Collectively to date, California's CCAs have signed long-term renewable energy contracts for over 6,000 MW in new-build solar, wind, biogas, energy storage, and, for the first time, geothermal energy according to CalCCA. A single form of Power Purchase Agreement has been negotiated for the two legacy projects (Altwind and East Wind) and is attached for review and approval. All substantive business and legal terms have been agreed upon and DCE legal counsel will work with Terra-Gen and TEA to finalize separate versions of this Agreement for the two projects. Links to the power purchase agreements can be found at the end of this staff report.

**Fiscal Analysis:** Under the pricing terms in the agreement, DCE will pay for the electricity generated by the projects at a fixed-price rate per MWh (megawatt hour), with no escalation for the full 15-year term of the contracts. All attributes from the facility, including energy, Renewable Energy Credits (RECs), and Resource Adequacy (RA) will be available to DCE. The contracts currently under consideration reflect pricing that is typical in the current market for new and existing wind resources.

The completion of long-term contracts for DCE's renewable portfolio represents an expected reduction in overall program costs. This cost reduction is over both the short-term and long-term due to the relatively low cost of the expected PPAs for the proposed projects compared to purchasing the same energy, capacity, and renewable energy credits on the open market. TEA estimates that purchasing the equivalent products over the lifetime of these contracts in the market would cost between \$7 million and \$10 million more than the expected cost of the proposed projects. These projects will lock in the costs for a significant portion of DCE's portfolio, allowing for increased rate certainty for DCE's customers.

**Attachments:**

1. Map showing location of three Terra-Gen projects
2. Resolution 2020-09

**Links to Power Purchase Agreements:**

1. [Terra-Gen – DCE Power Purchase Agreement – Alt Wind/East Wind](#)
2. [Terra-Gen – DCE Power Purchase Agreement – Coachella Hills Wind II](#)



# Location of Terra-Gen Coachella Hills Wind II, East Wind, and Altwind Projects

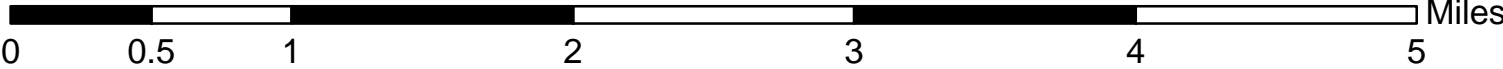


## Legend

- ★ Project Locations
- Palm Springs City Limits
- ⚡ Highways



Disclaimer: Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. CVAG and the County of Riverside make no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



G:\ovizcarra\Analysis folder\Ben\Proposed Projects Terra-Gen.mxd 12/14/2020



## **RESOLUTION NO. 2020-09**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF DESERT COMMUNITY ENERGY APPROVING THREE 15-YEAR POWER PURCHASE AGREEMENTS WITH TERRA-GEN LLC**

**WHEREAS**, Desert Community Energy (DCE) is a joint powers authority established on October 30, 2017 for the purpose of implementing community choice aggregation programs under Public Utilities Code Section 366.2.0;

**WHEREAS**, DCE is required under California law to satisfy the Renewables Portfolio Standard ("RPS") in its procurement of energy and this includes a mandate to meet 65% of its RPS under long terms contracts;

**WHEREAS**, Section E of DCE's Joint Powers Agreement (JPA) further provides that, "...the purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State's transition to clean power resources to the extent feasible. The DCE will also add increasing levels of locally generated renewable resources as these projects are developed and customer energy needs expand";

**WHEREAS**, DCE issued a Request for Offers in May, 2020, to negotiate power purchase agreements to satisfy its RPS requirements starting in 2021 and a short list of providers was selected to negotiate with DCE;

**WHEREAS**, DCE staff, with the assistance of legal counsel and The Energy Authority, have negotiated power purchase agreements with Terra-Gen, LLC, to purchase power on a long term basis from three local wind energy projects;

**WHEREAS**, under Section 2.5.139 of the JPA, the DCE Board has the power to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs including the acquisition of electric power supply and the provision of retail and regulatory support services; and

**WHEREAS**, DCE staff has recommended the approval of the Terra-Gen power purchase agreements and the Board has received information and had discussion regarding the terms of the agreements; and

#### **NOW THEREFORE BE IT RESOLVED, THE BOARD OF DIRECTORS HEREBY:**

1. Approve the 15-year power purchase agreement with Terra-Gen, LLC, for the acquisition and delivery of energy from its Coachella Hills Wind II project;
2. Approve the terms of two 15-year power purchase agreements with Terra-Gen, LLC, for the acquisition and delivery of energy from its East Wind and Altwind legacy wind projects based on the form of power purchase agreement presented to the Board;
3. Authorize the Executive Director and/or legal counsel to finalize the Coachella power purchase agreement and the two legacy power purchase agreements,

including any minor modifications necessary to complete exhibits and prepare such agreements for execution; and

4. Authorize the Executive Director to execute such power purchase agreements on behalf of DCE.

**ADOPTED AND APPROVED** by the Board of Directors of Desert Community Energy on this 21st day of December 2020.

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Geoff Kors  
Chair, Desert Community Energy

Attest:

---

Tom Kirk  
Secretary, Desert Community Energy

**Desert Community Energy Board  
December 21, 2020**



**STAFF REPORT**

**Subject:** December 2020 Rate Adjustment Summary

**Contact:** Don Dame, DCE Energy Consultant

---

**Recommendation: Information**

**Background:** At the November 16, 2020 meeting, the DCE Board adopted a Rate Stabilization Schedule (RSS) that enables DCE to adjust retail rates based on Board-approved financial policies and procedures. The Board-approved financial objectives include recovery of all power supply and operating costs, as well as building adequate reserves. The RSS prescribes utilization of a 12-month contiguous average rate comparison period, which may start up to six months prior to the month in which a rate adjustment is implemented to allow for potential recovery of unanticipated costs, such as the high wholesale purchased power costs associated with California's summer heat storm.

The RSS became effective on December 1, 2020. The Board's current rate policies include designing Desert Saver rates within a 0-1% average total bill discount versus SCE's comparable bundled base product and designing 100% Carbon Free rates at a 10% or less average total bill premium versus SCE's comparable bundled base product when averaged across customer classes over the defined rate comparison period.

The RSS requires DCE staff to prepare a summary report describing RSS-related rate adjustments and provide the report at the next scheduled Board meeting after such adjustments are implemented. This staff report summarizes DCE's December 2020 rate adjustment.

**December 2020 Rate Adjustment Details:**

- Rate Adjustment Effective Date: December 1, 2020
- 12-Month Rate Comparison Period: June 1, 2020 - May 31, 2021
- Includes MRW's November 20, 2020 long term SCE rate and PCIA forecast for 2021
- Includes August 2020 CAISO heat storm related imbalance charges
- Includes Congestion Revenue Rights (CRR) 2020-2021 auction revenues
- Desert Saver average total bill discount compared to SCE's bundled base power product estimated to be at 1.0% - 1.7%
- 100% Carbon Free average total bill premium compared to SCE's bundled base power product estimated to be a 7.0% - 8.0% premium
- Calculations and estimates based on applicable SCE/DCE joint rate comparisons, actual costs and revenues, and forecast costs and revenues throughout the utilized rate comparison period.



**Fiscal Analysis:** DCE's December 2020 rate adjustment is designed to recover all power supply and operating costs, build financial reserves, and avoid potential negative cash flow circumstances during the 12-month rate comparison period. The rate adjustment will result in increased electricity costs to customers, and improved balance between DCE's revenues and cost of service. The implemented rate changes are designed to fall within DCE's current approved average rate discount and premium parameters throughout the rate comparison period.

**Desert Community Energy Board  
December 21, 2020**



**STAFF REPORT**

**Subject:** Recap of 2020 DCE Program Activities

**Contact:** Katie Barrows, Director of Energy/Environmental Resources ([kbarrows@cvag.org](mailto:kbarrows@cvag.org))

---

**Recommendation: Information**

**Background:** DCE staff regularly provides updates on the activities underway with Desert Community Energy, particularly as it pertains to the launch in the City of Palm Springs. Staff will provide an update on the accomplishments of DCE in 2020 at the meeting. Some of the highlights include:

- ✓ Launched in the City of Palm Springs in April 2020
- ✓ Nearly 90 percent of all Palm Springs residents and businesses are enrolled in DCE
- ✓ Approximately 83 percent are enrolled in Carbon Free, the default product choice.
- ✓ DCE's Desert Saver plan, the lowest cost choice compared to SCE, has collectively saved Palm Springs residents and businesses more than \$182,000
- ✓ Carbon Free customers have reduced greenhouse gases by 72,381 metric tons, which is the equivalent of taking more than 15,000+ cars off the road
- ✓ DCE negotiated its first, long-term power purchase agreement for wind energy "made" in Palm Springs, which results in local jobs
- ✓ DCE started a Community Advisory Committee to support DCE outreach efforts and programs

**Community Outreach & Post-Launch Activities:** Community engagement continues to focus on responding to customers inquires, resolving issues where they occur, and providing informative messages about DCE on social media and the website. The latest opt-out/opt-down statistics are presented below.

The customer service team continues to respond to customers directly and address any questions, including bill-specific questions. The volume of calls to the DCE customer service line has decreased from the busiest month in June, when DCE received 1,929 calls to 1,120 calls in September and 596 calls in October. Call volume is likely to continue tapering off now that cooler temperatures have arrived.

A number of updates have been made to the DCE website to highlight the positive environmental benefit that DCE customers in the City of Palm Springs have contributed to reducing greenhouse gas emissions. The website also identifies the collective savings for Desert Saver customers in Palm Springs, which is nearly \$200,000. In the coming weeks, DCE will be adding tips to help customers reduce their energy use and encourage energy conservation.

In October 2020, the DCE Board approved an online bill comparison tool that will be live on the DCE website soon. Staff has worked with Calpine to test the bill comparison tool. Instructions for



using the tool and support for customers who may need assistance is included online. The bill comparison tool allows customers to compare the cost of DCE's Desert Saver and Carbon Free products compared with SCE's default base rate, by entering their own electricity usage.

The outreach team is evaluating ways to keep encouraging customers to stay with DCE, or to consider returning if they previously chose to stay with Edison. A review of large and key customers is in progress to identify potential customers who may consider returning to DCE. DCE's website also serves as a resource for information for customers to understand their bill, and other information about DCE, including:

- "Understanding Your Bill" page provides a sample typical customer bill and a Net Energy Metering (NEM) bill for solar customers. These sample bills can be found at: <https://desertcommunityenergy.org/understanding-your-bill/>.
- All customer notices mailed to-date are available on the DCE website at: <https://desertcommunityenergy.org/about/notices/>. The Spanish version of all notices are also posted on the website.

**Community Advisory Committee (CAC):** The Community Advisory Committee (CAC) will next meet in early 2021. The CAC continues to explore opportunities for local programs that DCE could offer in the future. CAC members are currently evaluating potential programs and will bring back summaries and recommendations to the next CAC meeting. A focus will be on no-cost to low-cost programs, as well as other opportunities including electric vehicle incentives for vehicle purchase and charging stations, energy efficiency programs, solar rebates, ways to promote battery storage, and programs that further climate and energy resilience.

**Opt-down and Opt-out Status:** As of November 2020, there have been a total of 4,814 opt-outs, or 11.37% of the 42,333 total eligible customers in Palm Springs. In addition, 2,940 customers, or 6.94%, chose to opt down to the Desert Saver product. Nine customers have chosen to opt-up from Desert Saver to 100% Carbon Free since DCE launched in April 2020.

The pattern of opt outs and opt downs is consistent with what has been seen for other CCAs in California. The number of DCE opt outs monthly continues to trend downward, with the number of opt outs decreasing 91% from June (785) to November (68) 2020.

***Desert Community Energy Monthly Contact Center  
and Opt-Action Statistics Summary - November 2020***

Stats by Month	July 20	August 20	September 20	October 20	November 20	Total
Total Calls	1085	1384	1120	793	596	<b>11,574</b>
Total Calls Connected to Agents	634	655	498	291	162	<b>5,514</b>
Average Seconds to Answer	0:00:25	0:00:46	0:00:26	0:00:26	0:00:22	
Average Call Duration	0:09:10	0:09:31	0:08:53	0:08:53	0:09:22	
Total Eligible Customers	42,234	42,250	42,270	42,299	42,333	<b>42,333</b>
Monthly Opt-Outs	356	356	212	141	68	<b>4,814</b>
Opt-Out Percentage	0.84%	0.84%	0.50%	0.33%	0.16%	<b>11.37%</b>
Total Opt-Down	283	240	133	113	48	<b>2,940</b>
Opt-Down Percentage	0.67%	0.57%	0.31%	0.27%	0.11%	<b>6.94%</b>
Total Opt-Up (from Desert Saver)	2	0	1	0	0	<b>9</b>
Opt-Up Percentage	0.005%	0.000%	0.002%	0.000%	0.000%	<b>0.021%</b>

**Desert Community Energy**  
**Opt-Action Statistics by Rate Category - November 2020**

		Opt-Out	% Opt-Out	Opt-Down	% Opt-Down
<b>Total Eligible Customers</b>	<b>42,333</b>	<b>4,814</b>	<b>11.37%</b>	<b>2,940</b>	<b>6.94%</b>
<b>Residential</b>		3,334	7.88%	2,202	5.20%
<b>Small Commercial</b>		532	1.26%	284	0.67%
<b>Medium Commercial</b>		59	0.14%	36	0.09%
<b>Large Commercial</b>		7	0.02%	1	0.00%
<b>Street Lights</b>		2	0.00%	4	0.01%
<b>Agriculture &amp; Pumping</b>		35	0.08%	1	0.00%
<b>Solar/Net Energy Metering (NEM)</b>		845	2.00%	412	0.97%

This total includes 725 (9.8%) CARE/FERA/Medical Baseline customers who opted out and 220 (2.98%) of these customers who opted down. For all customers, the reasons given for opting out include a dislike for being automatically enrolled (25%) and rate or cost concerns (36%). Many customers did not provide a reason for their decision to opt out.

Outreach continues to remind customers that if they stay with DCE and opt down to Desert Saver, they will save money over what they currently pay SCE.



**ITEM 7A****DESERT COMMUNITY ENERGY BOARD  
FY2020-2021 ATTENDANCE RECORD**

<b>Voting Members</b>	<b>JUL</b>	<b>AUG</b>	<b>SEP</b>	<b>OCT</b>	<b>NOV</b>	<b>DEC</b>	<b>JAN</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>	<b>MAY</b>	<b>JUNE</b>
City of Cathedral City	✓	✓	✓	✓	✓							
City of Palm Desert	✓	✓	✓	✓	✓							
City of Palm Springs	✓	✓	✓	✓	✓							

Ex Officio / Absent   
No Meeting \*

**Item 7B**



## DESERT COMMUNITY ENERGY

### Board Meeting Dates - 2021

DCE meetings will be held at 2:30 p.m. on the dates below. These meetings will be held via Zoom videoconferencing until further notice.

#### **Various Mondays due to holidays**

January 25

*(Martin Luther King Jr. Day is Jan. 18, 2021)*

February 8

*(Presidents' Day is Feb. 15, 2021)*

#### **Third Monday**

March 15

April 19

May 17

June 21

July 19

August 16

September 20

October 18

November 15

December 20



**Desert Community Energy Board**  
**December 21, 2020**



**STAFF REPORT**

**Subject:** Utility Discount (CARE/FERA) Program Update

**Contact:** Benjamin Druyon, Management Analyst ([bdruyon@cvag.org](mailto:bdruyon@cvag.org))

---

**Recommendation: Information**

**Background:** California Alternate Rates for Energy (CARE<sup>1</sup>) and Family Electric Rate Assistance (FERA) are two low-income assistance programs authorized by the California Public Utilities Commission and offered by Southern California Edison (SCE) and SoCalGas. CARE customers receive a savings reduction of up to 30% on their energy bill, while FERA customers can save up to 18%. Customers may qualify for CARE or FERA if someone in their household already participates in a public assistance program, such as CalWorks, food stamps, or Medi-Cal. Customers may also qualify based on household income. CARE customers save an average of approximately \$864 each year on their energy bills.

In early 2019, DCE staff conducted research that showed low participation rates for the CARE/FERA program that was managed by SCE within DCE's respective service territory. Furthermore, there were only two contractors in the Coachella Valley that were enlisted by SCE to help secure new enrollments. And data showed there were only a handful of new enrollments secured by those contractors in the past several years.

From October 2019 until the COVID-19 pandemic hit earlier this year, DCE had Board-approved services agreement with Lift to Rise to boost enrollment in the utility discount programs. The social distancing requirements caused by the COVID-19 pandemic forced DCE and Lift to Rise to revisit the planned workshops and community events, as well as the overall outreach efforts. The program had many successes and ensured customers were getting the discounts for which they qualified.

However, the unprecedented unemployment rates experienced during COVID-19 prompted SCE to increase their own outreach efforts. SCE has aggressively been communicating the availability of financial assistance programs and services to their customers. CARE/FERA programs are on the forefront of some of those outreach efforts. SCE has implemented a CARE mailing campaign, increased advertising through social media platforms, as well as launched a community engagement campaign through email and text messaging. SCE's Corporate Philanthropy group has been reaching out to their constituents, business partners, food banks and other organizations to promote the availability of these discount programs. In addition to increased outreach efforts, SCE has existing data-sharing relationships with other governmental agencies who offer programs like Women Infant and Children (WIC) and food stamps. Customers who sign

---

<sup>1</sup> CARE/FERA is funded through a rate surcharge paid by all other utility customers. The income limits may be adjusted each year depending on inflation. California has a Low-Income Oversight Board (LIOB), which was established by the Legislature to advise the CPUC on energy related low-income assistance programs of utilities under the CPUC's jurisdiction.

up for those programs are automatically enrolled in the CARE or FERA programs. SCE also indicates any calls to their call center from customers asking for financial assistance, or who are experiencing a financial burden, are automatically considered for the CARE program.

Because of the unprecedented unemployment rate due to COVID-19, and as a result of SCE's increased efforts with outreach, as well as automatic enrollments through existing aid programs, SCE's enrollment numbers have increased dramatically throughout their service territory. SCE reports enrollments from March 2020 through May 2020 had increased by 250% compared to March 2019 through May 2019. In light of these factors, DCE staff notified the Board in June 2020 that they prudently decided to terminate the contract with Lift To Rise.

Recent reports from SCE show that enrollment numbers continue to grow with each passing month. DCE staff is providing the table below to show the total cumulative enrollments for DCE's service territory. Staff will continue to provide updates on the CARE/FERA enrollment numbers on a quarterly basis, as requested by the Board. SCE also reports high enrollment numbers in other regions, averaging between 100 and 200 enrollments per month.

**CARE/FERA Total Enrollments from January 2020 to October 2020**

City	Zip Code	Enrollments JAN - APR	MAY	JUNE	JULY	AUG	SEP	OCT
Palm Desert	92211	338	1,750	1,781	1,864	1,952	1,985	2,017
Palm Desert	92260	686	4,285	4,364	4,525	4,731	4,771	4,848
Cathedral City	92234	1289	8,061	8,192	8,534	8,914	9,041	9,130
Palm Springs	92262	659	4,061	4,162	4,307	4,521	4,572	4,626
Palm Springs	92264	473	2,909	2,971	3,041	3,170	3,192	3,236

**Fiscal Analysis:** There is no fiscal impact for DCE.



**DESERT COMMUNITY ENERGY**  
**UNAUDITED BALANCE SHEET**  
**FROM JULY 1, 2020 TO NOVEMBER 30, 2020**

	<u>GENERAL</u>		<u>PALM SPRINGS</u>		<u>TOTAL</u>	
<u>ASSETS</u>						
River City Bank						
- Operating Account			6,350.24		6,350.24	
- Money Market Account	1,535,205.70		1,915,000.00		3,450,205.70	
- ICS Account	1,315,286.55		0.00		1,315,286.55	
- Lockbox Account	1,631,518.46		(700,331.88)		931,186.58	
Total Cash		4,482,010.71		1,221,018.36		5,703,029.07
Accounts Receivable						
- Southern California Edison			2,830,153.14		2,830,153.14	
- Bad Debt			(67,397.35)		(67,397.35)	
Total Accounts Receivable				2,762,755.79		2,762,755.79
Accrued Revenue				1,119,223.34		1,119,223.34
Deposits/Bonds						
- CPUC	100,000.00				100,000.00	
Total Deposits/Bonds		100,000.00				100,000.00
TOTAL ASSETS		4,582,010.71		5,102,997.49		9,685,008.20
<u>LIABILITIES</u>						
Accounts Payable						
- Burke Rix			947.50		947.50	
- Calpine	0.00		48,035.50		48,035.50	
- Donald D. Dame	1,149.31		3,447.94		4,597.25	
- The Energy Authority	0.00		1,816,532.97		1,816,532.97	
- CA Community Choice Association	5,433.50		16,300.50		21,734.00	
Total Accounts Payable		6,582.81		1,885,264.41		1,891,847.22
Due to Other Governments						
Utility Users Tax- Palm Springs			142,125.02		142,125.02	
Electric Energy Surcharge (CDTFA)			28,249.82		28,249.82	
Total Due to Other Governments				170,374.84		170,374.84
Vendor security deposits						
Terra-Gen			165,000.00		165,000.00	
Total Vendor security deposits				165,000.00		165,000.00
TOTAL LIABILITIES		6,582.81		2,220,639.25		2,227,222.06
<u>FUND BALANCE</u>						
Reserve (Restricted requirement for Credit Solutions TEA)			1,750,000.00		1,750,000.00	
Fund Balance	4,575,427.90		1,132,358.24		5,707,786.14	
TOTAL LIABILITIES AND FUND BALANCE		4,582,010.71		5,102,997.49		9,685,008.20

**DESERT COMMUNITY ENERGY**  
**UNAUDITED STATEMENT OF REVENUES, EXPENDITURES,**  
**AND CHANGES IN FUND BALANCES**  
**FROM JULY 1, 2020 TO NOVEMBER 30, 2020**

	<u>GENERAL</u>	<u>PALM SPRINGS</u>	<u>TOTAL</u>
<b><u>REVENUES</u></b>			
Electricity Sales <sup>(1)</sup>	0.00	17,454,524.07	17,454,524.07
Bad Debt	0.00	(50,881.86)	(50,881.86)
Other Revenue	0.00	238,832.44	238,832.44
Investment Income	8,667.01	0.00	8,667.01
<b>TOTAL REVENUES</b>	<u>8,667.01</u>	<u>17,642,474.65</u>	<u>17,651,141.66</u>
<b><u>EXPENDITURES</u></b>			
Cost of Electricity			
Electricity Purchase	0.00	9,792,068.80	9,792,068.80
Low Carbon Settlement	0.00	560,250.00	560,250.00
Renewable Energy Credit Settlement	0.00	472,000.00	472,000.00
Market Charges	0.00	5,595,253.55	5,595,253.55
Total Cost of Electricity	<u>0.00</u>	<u>16,419,572.35</u>	<u>16,419,572.35</u>
Accounting / Bank Services	259.01	259.01	518.01
Professional Services			
- Arthur J Gallaguer Insurance & co	233.13	233.13	466.25
- LSL, CPAs	0.00	0.00	0.00
- Lift to Rise	0.00	0.00	0.00
- Southern California Edison	0.00	19,905.35	19,905.35
Total Professional Services	<u>233.13</u>	<u>20,138.48</u>	<u>20,371.60</u>
Insurance			
- Directors & Officers	3,000.00	3,000.00	6,000.00
- General Liability	250.00	250.00	500.00
Total Insurance	<u>3,250.00</u>	<u>3,250.00</u>	<u>6,500.00</u>
Consultants			
- Donald D. Dame	3,106.69	9,320.06	12,426.75
- Calpine Energy Solutions	0.00	239,415.05	239,415.05
- CVAG	0.00	0.00	0.00
- The Energy Authority	0.00	516,910.51	516,910.51
- White Rabbit Group	800.00	800.00	1,600.00
Total Consultants	<u>3,906.69</u>	<u>766,445.62</u>	<u>770,352.31</u>
Outreach			
- Burke Rix Communications	0.00	11,430.52	11,430.52
Total Outreach	<u>0.00</u>	<u>11,430.52</u>	<u>11,430.52</u>
Postage			
- Ace Printing	1,223.83	1,223.83	2,447.66
Total Printing	<u>1,223.83</u>	<u>1,223.83</u>	<u>2,447.66</u>
Printing			
- Ace Printing	1,842.61	1,842.61	3,685.21
Total Printing	<u>1,842.61</u>	<u>1,842.61</u>	<u>3,685.21</u>
Registrations/Memberships			
- CA Community Choice Association	10,898.25	32,694.75	43,593.00
Total Registration/Memberships	<u>10,898.25</u>	<u>32,694.75</u>	<u>43,593.00</u>
<b>TOTAL EXPENDITURES</b>	<u>21,613.50</u>	<u>17,256,857.16</u>	<u>17,278,470.66</u>
Excess of Revenues over Expenditures	(12,946.49)	385,617.49	372,671.00
Fund Balance - Beginning of the Year	<u>4,588,374.39</u>	<u>2,496,740.75</u>	<u>7,085,115.14</u>
Fund Balance - End of the Year	<u>4,575,427.90</u>	<u>2,882,358.24</u>	<u>7,457,786.14</u>

(1) Electricity sales revenue includes revenues actually billed to customers as well as estimated customer usage during the reporting period that is not yet billed



**DESERT COMMUNITY ENERGY**  
**UNAUDITED FINANCIAL STATEMENTS**  
**FROM JULY 1, 2020 TO NOVEMBER 30, 2020**

**ASSETS**

River City Bank		
- Operating Account	6,350.24	
- Money Market Account	3,450,205.70	
- ICS Account	1,315,286.55	
- Lockbox Account	931,186.58	
Total Cash		5,703,029.07
Accounts Receivable		
- Southern California Edison	2,830,153.14	
- Bad Debt	(67,397.35)	
Total Accounts Receivable		2,762,755.79
Accrued Revenue		1,119,223.34
Deposits/Bonds		100,000.00
<b>TOTAL ASSETS</b>		<b>9,685,008.20</b>

**LIABILITIES**

Accounts Payable		
- Burke Rix	947.50	
- Calpine	48,035.50	
- Donald D. Dame	4,597.25	
- The Energy Authority	1,816,532.97	
- CA Community Choice Association	21,734.00	
Total Accounts Payable		1,891,847.22
Due to Other Governments		
Coachella Valley Association of Governments	0.00	
Utility Users Tax- Palm Springs	142,125.02	
Electric Energy Surcharge (CDTFA)	28,249.82	
Total Due to Other Governments		170,374.84
Vendor security deposits		
Terra-Gen	165,000.00	
Total Vendor security deposits		165,000.00
<b>TOTAL LIABILITIES</b>		<b>2,227,222.06</b>

**FUND BALANCE**

Reserve (Restricted requirement for Credit Solutions TEA)	1,750,000.00
Fund Balance	5,707,786.14
<b>TOTAL FUND BALANCE</b>	<b>7,457,786.14</b>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>9,685,008.20</b>

**REVENUES**

Electricity Sales <sup>(1)</sup>	17,403,642.21
Carbon Free	15,425,480.11
Carbon Free- CARE/FERA	2,382,892.73
Desert Saver	1,643,818.39
NEM- Carbon Free	(1,997,667.16)
Bad Debt	(50,881.86)
Other revenue	238,832.44
Investment Income	8,667.01
<b>TOTAL REVENUES</b>	<b>17,651,141.66</b>

**EXPENDITURES**

Cost of Electricity	
Electricity Purchase	9,792,068.80
Low Carbon Settlement	560,250.00
Renewable Energy Credit Settlement	472,000.00
Market Charges	5,595,253.55
Total Cost of Electricity	16,419,572.35
Accounting / Bank Services	518.01
Professional Services	20,371.60
Insurance	6,500.00
Consultants	770,352.31
Outreach	11,430.52
Postage	2,447.66
Printing	3,685.21
Registrations/Memberships	43,593.00
<b>TOTAL EXPENDITURES</b>	<b>17,278,470.66</b>
Excess of Revenues over Expenditures	372,671.00
Fund Balance - Beginning of the Year	7,085,115.14
Fund Balance - End of the Year	7,457,786.14

(1) Electricity sales revenue includes revenues actually billed to customers as well as estimated customer usage during the reporting period that is not yet billed