



DESERT COMMUNITY ENERGY MEETING AGENDA

**Monday, May 19, 2025
3:00 p.m.**

**Palm Springs City Hall
Large Conference Room
3200 E. Tahquitz Canyon Way
Palm Springs CA 92262**

Members of the public may use the following link for listening access and ability to address the Desert Community Energy Board when called upon:

<https://us02web.zoom.us/j/83306374053?pwd=tgX8jBIxFHAKl2pK2o10x8UZbrSJf5.1>

**Dial In: +1 669 900 9128 US
Webinar ID: 833 0637 4053
Password: 997732**

**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 by 5:00 p.m. on the day prior to the Board meeting. Members of the public joining the meeting by Zoom can provide comment by using the “raise hand” feature or hitting *9 on the phone keypad.

As a convenience to the public, DCE provides a call-in and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Please note that, in the event of a technical issue disrupting the call-in or internet-based options, the meeting will continue unless otherwise required by law.

**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. AGENDA MODIFICATIONS (IF ANY)

4. PUBLIC COMMENTS ON AGENDA ITEMS

This is the first of two opportunities to address the Board. 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.

5. BOARD MEMBER / EXECUTIVE DIRECTOR COMMENTS

6. CONSENT CALENDAR

A. Approve the minutes of the March 17, 2025, Board meeting

P5

B. Receive and file the Triennial Data Privacy Audit Report for 2022-2024

P8

C. Approve continued participation as an operational member of the California Community Choice Association (CalCCA) for an annual membership rate of \$111,870

P14

6.1 ITEMS HELD OVER FROM CONSENT CALENDAR

7. DISCUSSION / ACTION

A. Contractual Services for Customer Service Support – Lisa McNeilly

P17

Recommendation: Authorize the Executive Director to execute a restated agreement with Calpine Community Energy to provide data management and customer call center services through April 2028, with an optional three-year extension, at a cost of about \$590,000 annually

B. Revolving Line of Credit Renewal with River City Bank – Claude Kilgore

P45

Recommendation: Adopt Resolution 2025-02, approving the Fourth Amendment to Credit Agreement with River City Bank for an increased total not to exceed \$20,000,000 and authorizing the Executive Director and/or Legal Counsel to negotiate and take the necessary steps to finalize and execute the credit agreement amendment and related documents

C. Fiscal Year 2025-26 Budget Preview – Claude Kilgore

P54

Recommendation: Information

8. INFORMATION

A) Attendance Record

P57

B) 2024 Annual Supplier Diversity Report

P58

C) Conflict of Interest Guidance

P76

D) Unaudited Year-to-Year Financial Report as of March 31, 2025

P90

E) DCE's Quarterly Investment Report through March 31, 2025

P95

9. PUBLIC COMMENTS ON NON-AGENDA ITEMS

This is the second of two opportunities to address the Board. 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.

10. ANNOUNCEMENTS

The next DCE Board meeting will be held June 16, 2025, at 3:00 p.m. at the Large Conference Room at Palm Springs City Hall, 3200 E. Tahquitz Canyon Way, Palm Springs, 92262.

11. ADJOURNMENT



DESERT COMMUNITY ENERGY BOARD MEMBER ROSTER

Voting Members	Seat on Committee	Representative
City of Palm Desert	Vice Chair	Veronica Chavez Finance Director
City of Palm Springs	Chair	Jeffrey Bernstein Councilmember
DCE Staff		
Tom Kirk, Executive Director		
Claude Kilgore, Director of Finance		
Lisa McNeilly, Director of Energy & Sustainability		
Savannah Gil, Program Specialist		
Janice Reitman, Accounting Manager		

ITEM 6A

Desert Community Energy Board Meeting Minutes March 17, 2025



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 Councilmember Jeffrey Bernstein at 3:01 p.m. at Palm Springs City Hall, Large Conference Room, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262.

2. ROLL CALL

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

Members Present

Councilmember Jeffrey Bernstein
Finance Director Veronica Chavez, *Vice Chair*

Member Jurisdiction

City of Palm Springs
City of Palm Desert

3. AGENDA MODIFICATIONS (IF ANY)

None

4. PUBLIC COMMENTS ON AGENDA ITEMS

Emailed public comment was received from Brad Anderson, resident of Rancho Mirage, in regards to Item 7A and his opposition to the having a Board with only two members.

5. BOARD MEMBER/EXECUTIVE DIRECTOR COMMENTS

Executive Director Tom Kirk highlighted the Terra-Gen signing ceremony that took place in February. He shared photos of the event and the acknowledgement for former Chair Lisa Middleton.

Mr. Kirk also introduced CVAG's new Energy & Sustainability Director Lisa McNeilly and welcomed her to the team.

6. CONSENT CALENDAR

Prior to the vote, Councilmember Bernstein requested a correction to the spelling of his name in Item 6C.

IT WAS MOVED BY VICE CHAIR CHAVEZ AND SECONDED BY COUNCILMEMBER BERNSTEIN TO APPROVE THE FOLLOWING CONSENT CALENDAR ITEMS WITH AMENDMENTS:

A. Approve the minutes of the November 18, 2024, Board meeting

- B. Authorize the Executive Director to execute an amended engagement letter with Best, Best & Krieger LLP to incorporate proposed regulatory compliance and filing support services into the scope of work**
- C. Authorize the updating of the signature cards and signatories for DCE investments and banking**

THE MOTION CARRIED WITH 2 AYES.

Councilmember Bernstein	Aye
Vice Chair Veronica Chavez	Aye

6.1 ITEMS HELD OVER FROM CONSENT CALENDAR

None

7. DISCUSSION / ACTION

A. Election of DCE Chair

Mr. Kirk introduced the item.

IT WAS MOVED BY VICE CHAIR CHAVEZ AND SECONDED BY COUNCILMEMBER BERNSTEIN TO ELECT PALM SPRINGS COUNCILMEMER JEFFREY BERNSTEIN AS THE CHAIR OF THE DESERT COMMUNITY ENERGY BOARD OF DIRECTORS.

THE MOTION CARRIED WITH 2 AYES.

Councilmember Jeffrey Bernstein	Aye
Vice Chair Veronica Chavez	Aye

B. Fiscal Year 2024-25 Budget Amendment

Finance Director Claude Kilgore presented the staff report.

Member discussion ensued with Mr. Kilgore answering questions from the Board and addressing requests to see a 5-to-10 year projection of cash analysis in the budget.

IT WAS MOVED BY VICE CHAIR CHAVEZ AND SECONDED BY CHAIR BERNSTEIN TO APPROVE THE MID-YEAR BUDGET AMENDMENT FOR FISCAL YEAR 2024-25.

THE MOTION CARRIED WITH 2 AYES.

Chair Jeffrey Bernstein	Aye
Vice Chair Veronica Chavez	Aye

C. Rate Stabilization Schedule Amendment

DCE Energy Consultant Don Dame joined the meeting via Zoom and presented the staff report.

Brief member discussion ensued with Mr. Dame answering questions from the Board members regarding the schedule.

IT WAS MOVED BY VICE CHAIR CHAVEZ AND SECONDED BY CHAIR BERNSTEIN TO ADOPT DCE RESOLUTION 2025-01 APPROVING THE AMENDED RATE STABILIZATION SCHEDULE EFFECTIVE APRIL 1, 2025

THE MOTION CARRIED WITH 2 AYES.

**Chair Jeffrey Bernstein
Vice Chair Veronica Chavez**

**Aye
Aye**

8. INFORMATION

The following items were included in the agenda packet for members' information :

- A) Attendance Record
- B) Summary of the Community Advisory Committee Activities
- C) Summary of February 2025 Rate Adjustment
- D) Unaudited Year- to- Year Financial Report as of December 31, 2024
- E) DCE's Quarterly Investment Report through December 31, 2024

9. PUBLIC COMMENT ON NON-AGENDA ITEMS

Emailed public comment was received from Mr. Anderson regarding public comment time limits and his objections to having them at the beginning and end of the agenda.

10. ANNOUNCEMENTS

The next DCE Board meeting will be held April 21, 2025, at 3:00 p.m. at the Large Conference Room at Palm Springs City Hall, 3200 E. Tahquitz Canyon Way, Palm Springs, 92262.

11. ADJOURNMENT

There being no further business, Chair Bernstein adjourned the meeting at 3:34 p.m.

Respectfully submitted,

Elysia Regalado
Management Analyst

ITEM 6B

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: Triennial Audit of Data Privacy and Data Security

Contact: Savannah Gil, Program Specialist (sgil@cvaq.org)

Recommendation: Receive and file the Triennial Data Privacy Audit Report for 2022-2024

Background: Pursuant to Decision 12-08-45 (the Decision), the California Public Utilities Commission (CPUC) requires each Community Choice Aggregator (CCA) to perform an independent audit every three years and submit a report to the CPUC relating to the CCA's data privacy and data security policies and procedures relating to customer data. Customer data is "Covered Information" as defined by the Decision.

DCE engaged Abbot, Stringham, & Lynch (ASLCPA), a California-based Certified Public Accountants firm, to perform agreed-upon procedures to verify DCE's internal privacy and data security policies regarding Covered Information as defined by the Decision, for the period from January 1, 2022, through December 31, 2024. The audit reported compliance with all required internal data privacy and security practices with one exception related to issuing privacy notices to existing customers. The audit also notes that DCE staff has, since early March, been including a link to the privacy policy in Southern California Edison's monthly bills to DCE customers as well as outgoing emails to customers.

DCE's Triennial Data Privacy Audit Report (attached) was issued and sent to the CPUC on April 25, 2025. Due to the sensitive nature of the vulnerabilities, it is common practice among CCAs to keep the longer, detailed report internal. The attached report has been edited to remove specific vulnerability details to protect DCE from harm. The next triennial audit covering calendar years 2025 through 2027 is not due until April 1, 2028.

Fiscal Analysis: ASLCPA's fees for the audit services were \$18,500. These costs were included in DCE's Fiscal Year 2024-25 Budget.

Attachment: Independent Service Auditor's Agreed-Upon Procedures Report (public version)



DESERT COMMUNITY ENERGY

**INDEPENDENT ACCOUNTANT'S REPORT
ON AGREED-UPON PROCEDURES**

**FOR THE THREE-YEAR PERIOD
FROM JANUARY 1, 2022
THROUGH DECEMBER 31, 2024**



INDEPENDENT ACCOUNTANT'S REPORT

Claude Kilgore, Finance Director
Desert Community Energy
Palm Desert, California

and

California Public Utilities Commission
San Francisco, California

We have performed the procedures enumerated below on Desert Community Energy's ("DCE") internal privacy and data security policies regarding "Covered Information" for the three-year period from January 1, 2022, through December 31, 2024. DCE's management is responsible for the internal privacy and data security policies regarding "Covered Information" for the three-year period from January 1, 2022, through December 31, 2024.

DCE has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of complying with rules regarding privacy and security protection for energy usage data applicable to community choice aggregators or electrical service providers as defined in California Public Utilities Commission's ("CPUC") Decision 12-08-045. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and the associated findings are as follows:

1) We obtained the following documents from DCE:

- Latest privacy notice (version prior to December 31, 2024) provided to customers
- Internal privacy and data security policies
- List of agents, contractors, and other third parties to which DCE disclosed Covered Information for a primary purpose
- List of agents, contractors, and other third parties to which DCE disclosed Covered Information for a secondary purpose, if any
- A list of customers in which DCE disclosed Covered Information to a third party when prior authorizations are required, if any
- List of disclosures pursuant to legal requests, if any
- List of security breaches, if any



Abbott, Stringham & Lynch

1901 S Bascom Avenue
Suite 105
Campbell, CA 95008

Main: 408-377-8700
Fax: 408-377-0821
Web: aslcpa.com

Member of
Allinial
GLOBAL®
An association of legally independent firms

2) We performed the following procedures with respect to these documents:

A. Data Security and Information Technology (IT) Environment and Controls:

- i. The third-party IT Specialists performed the following procedures to ascertain that DCE implemented technical and physical safeguards to protect Covered Information from unauthorized access, destruction, use, modification, or disclosures. No exceptions were noted.
 - External vulnerability scans against web assets, such as DCE's website, public IP addresses, and custom web applications that have access to Covered Information;
 - Internal authenticated vulnerability scans against DCE's endpoints;
 - Inspection of Microsoft 365 and/or Google Workspace tenants;
 - Data classification scans to determine Covered Information did not exist outside the designated storage locations;
 - Inspection of IT documentation such as policies and procedures related to both general IT controls and Covered Information;
 - Inspection of the processes surrounding the acquisition, processing, and storage of Covered Information;
 - Interviews with DCE's administrative, operational, technology, and IT support staff, as applicable.

The IT Specialists also used third-party risk-ranking service, BitSight, to provide additional context around DCE's risk specific to the utilities industry.

- ii. Ascertain that upon any breach affecting 1,000 or more customers, DCE notified the CPUC within two weeks of the detection, or within one week of notification.
 1. Upon inquiry of DCE's management, management represented that DCE did not have any breach affecting 1,000 or more customers during the three-year period from January 1, 2022, through December 31, 2024. No exceptions were noted.

B. Transparency:

- i. Ascertain that a privacy notice was provided to customers from which DCE collected Covered Information.
 1. We obtained and inspected the enrollment notice sent to DCE's customers and noted that the notice contained a link to DCE's privacy policy. We noted that the privacy policy is available at all times on DCE's website at <https://desertcommunityenergy.org/customer-privacy/>. However, we noted that DCE did not provide this privacy notice to existing customers at least once a year, and they did not include a link to this notice in all electronic correspondence to customers. As such, we noted these as exceptions.

Effective March 6, 2025, DCE's management began to include a link to the privacy policy on the monthly Southern California Edison bills and all outgoing email messages from staff.

- ii. We inspected the latest privacy notice and ascertained that it contained the language described in CPUC's Decision 12-08-045. No exceptions were noted.

C. Use and Disclosure:

- i. For all third parties in which DCE shared Covered Information for a primary purpose, we ascertained that by contract, DCE required these third parties to access, collect, store, use, and disclose the Covered Information under policies, practices, and notification requirements as required under CPUC's Decision 12-8-045.
 1. Upon inquiry of DCE's management, management represented that DCE disclosed Covered Information for a primary purpose with two third parties during the three-year period from January 1, 2022, through December 31, 2024. We inspected the executed contracts and non-disclosure agreements, as applicable, with all third parties in which DCE shared Covered Information for a primary purpose, and ascertained that DCE required these third parties to access, collect, store, use, and disclose the Covered Information under policies, practices, and notification requirements as required under CPUC's Decision 12-08-045. No exceptions were noted.
- ii. Ascertain that authorizations were obtained from customers for the disclosure of Covered Information to third parties for a secondary purpose.
 1. Upon inquiry of DCE's management, management represented that DCE did not disclose Covered Information to third parties for a secondary purpose during the three-year period from January 1, 2022, through December 31, 2024. As such, this step is not applicable and was not performed.
- iii. Ascertain that a notice was provided to the applicable customer within seven days for the disclosure of Covered Information as a result of a subpoena or legal proceedings.
 1. Upon inquiry of DCE's management, DCE disclosed Covered Information to a tax agency as a result of a subpoena during the three-year period from January 1, 2022, through December 31, 2024. However, DCE did not notify the customer in writing to allow the customer seven days to appear and contest the claim because it was prohibited by the subpoena. This is not noted as an exception.

CI. Access and Control:

- i. Ascertain that DCE provided customers with convenient and secure access to their Covered Information.
 1. Upon inquiry of DCE's management, customers can request access to their Covered Information by phone or email, or through Southern California Edison's website. No exceptions were noted.
- ii. Ascertain that DCE provided customers with convenient mechanisms for granting and revoking authorization for secondary uses of Covered Information, disputing the accuracy or completeness of Covered Information, and requesting corrections or amendments to Covered Information.
 1. Upon inquiry of DCE's management, DCE did not disclose Covered Information to third parties for a secondary purpose during the three-year period from January 1, 2022, through December 31, 2024. In addition, customers are advised to contact Southern California Edison, the owners of the Advanced Metering Infrastructure, when they wish to dispute the accuracy or completeness of Covered Information and request corrections or amendments to Covered Information. No exceptions were noted.

E. Data Minimization:

- i. Ascertain that Covered Information was maintained only for as long as reasonably necessary or as authorized by the CPUC to accomplish a specific primary purpose or for a specific secondary purpose authorized by the customers.
 1. We noted that DCE has in place records retention policies and procedures to ensure that the use and retention of Covered Information is maintained for a period that is necessary for its continued operations. No exceptions were noted.

We were engaged by DCE to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the AICPA. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on DCE's internal privacy and data security policies regarding "Covered Information" for the three-year period from January 1, 2022, through December 31, 2024. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of DCE and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of DCE and CPUC and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink, reading "Abbott, Stangor & Lynch". The signature is written in a cursive, flowing style.

April 24, 2025

ITEM 6C

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: California Community Choice Association Operational Membership

Contact: Savannah Gil, Program Specialist (sgil@cvaq.org)

Recommendation: Approve continued participation as an operational member of the California Community Choice Association (CalCCA) for an annual membership rate of \$111,870

Background: In June 2020, the DCE Board approved operational membership in the California Community Choice Association (CalCCA), a non-profit association of Community Choice Aggregators (CCAs). CalCCA serves its members and strengthens their collective voice through education, technical guidance, and regulatory and legislative advocacy. CalCCA's mission is to create a legislative and regulatory environment that supports the development and long-term sustainability of locally run CCAs in California.

CalCCA represents the interests of CCAs in the Legislature and at state regulatory agencies, including the California Public Utilities Commission (CPUC), California Energy Commission (CEC), California Independent System Operator (CAISO), and the California Air Resources Board (CARB). CalCCA membership includes 24 of the 25 CCAs operating in California as well as several emerging CCA communities. CalCCA members are successfully and reliably serving upwards of 14 million customers in more than 200 cities and counties in California – and those numbers are set to grow as more communities move ahead with CCA. More information about CalCCA and the resources it offers is available at <https://cal-cca.org>.

There are numerous benefits to actively engaging with other CCAs in California. CalCCA offers a wide range of committees for its CCA members, providing opportunities for education and collaboration. DCE staff regularly attend CalCCA committee meetings, which cover regulatory issues, legislative, compliance, billing, procurement, equitable engagement, and marketing. Given DCE's small staff, participating in these committees and working groups offers immense value.

Having CalCCA's assistance in real-time tracking of regulatory and legislative issues affecting CCAs is another benefit. The compliance committee offers insight and guidance on the compliance reports and plans that DCE is required to submit. CalCCA also facilitates working groups of CCAs interested in specific topics, including risk management, transportation electrification, distributed energy resources, and the implementation of the Solar Billing Plans for solar customers.

DCE started as an Affiliate Member of CalCCA in 2017 and became an operational member with the launch in the City of Palm Springs in 2020. As an operational member, DCE has access to a large compilation of CalCCA resources, including sample agreements, data analysis, contracts,

and legislative and regulatory tracking. CalCCA is actively engaged with the legislature, CPUC, CEC, CARB, and CAISO on issues significant to DCE. Among the proceedings on which CalCCA is currently focused is the CPUC's Power Charge Indifference Adjustment (PCIA) Order Instituting Rulemaking (R.17-060-026). The current PCIA methodology was adopted in D.18-10-019, which tasked the CPUC Energy Division with calculating and producing a Resource Adequacy Market Price Benchmark. However, rapid increases in prices for certain recent market transactions have revealed issues inherent to the methodology that may be undermining customer cost indifference. R. 17-060-026 encouraged the consideration of alternatives to the PCIA, for which CalCCA is ensuring CCAs are properly represented and supported in proposed alternatives.

The DCE Board has directed staff to review the CalCCA membership on an annual basis. In June 2020, the Board gave the Executive Director flexibility to determine whether DCE would have a voting position on the CalCCA Board, which comes with a significant time commitment for meetings. This year, staff recommends that the DCE Board approve continued operational membership in CalCCA. Staff is not recommending that DCE have a voting position on the CalCCA Board, considering the required time commitment.

Fiscal Analysis: DCE's continued participation as an operational member will cost \$111,870 for the year. This is an increase of 27.7 percent from the current fiscal year's dues, which were \$87,580

CalCCA's membership dues are based on a formula. For prior fiscal years, dues were calculated based on members' fiscal year revenue multiplied by 0.145% (subject to a cap of \$405,000). At CalCCA's March 13, 2025 meeting, the CalCCA Board approved the budget and dues methodology. This is to accommodate CalCCA's staff succession planning. CalCCA expects a steady state budget with very minimal annual increases going forward.

Part of this increase is due to higher DCE revenues and part to the higher multiplier that CalCCA is using. Even if CalCCA had not used the higher multiplier, DCE would have seen a rate increase of about 12 percent.

CalCCA invoices DCE quarterly. With approval, the cost will be included in DCE's Fiscal Year 2025-26 Budget, which will go to the Board in June for adoption.

Attachment: CalCCA's Fiscal Year 2025-26 membership renewal letter



California Community Choice Association

Operational Member Dues Fiscal Year 2025-2026 (July 1, 2025 - June 30, 2026)

Desert Community Energy

Dear Ms. McNeilly,

On March 13, 2025, the CalCCA Board unanimously approved the proposed FY 25-26 budget and corresponding changes to the Operational Membership dues methodology. Specifically, as outlined in the table below, the Board agreed to change the dues methodology calculations to increase the rate from .145% to .165% of CCA revenue and create four capped tiers based on a range of CCA revenue.

FY 25-26 Dues Caps	CCA Revenue
.165% of Revenue	<\$200M
\$420,000	\$200M-<\$400M
\$520,000	\$400M-<\$600M
\$540,000	\$600M-<\$1000M
\$555,000	>\$1000M

Based on this, the annual contribution for your CCA will be \$111,788 for the upcoming fiscal year.

Quarterly payment invoices will be sent at the beginning of each fiscal year quarter (July, October, January, and April) from the CalCCA QuickBooks system to your contact(s) on file. Payments are due 30 days after receipt of the invoice.

Please do not hesitate to contact me if you have any questions or would like to discuss your membership. We sincerely appreciate your continued partnership and involvement in CalCCA as we celebrate nearly 10 years of operation.

Thank you,

Martha Serianz
California Community Choice Association
510-290-4187
martha@cal-cca.org

ITEM 7A

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: Contractual Services for Customer Service Support

Contact: Claude Kilgore, Director of Finance (ckilgore@cvaq.org) and
Lisa McNeilly, Director of Energy & Sustainability (lmcneilly@cvaq.org)

Recommendation: Authorize the Executive Director to execute a restated agreement with Calpine Community Energy to provide data management and customer call center services through April 2028, with an optional three-year extension, at a cost of about \$590,000 annually

Background: In February 2018, in the earliest days of DCE's formation, the DCE Board authorized a contract with Calpine Community Energy (also known as Calpine Energy Solutions LLC) to provide data management and customer call center services. Calpine is a go-to resource for Community Choice Aggregation (CCA) programs, contracted for more than 20 operating CCAs and managing customer data and billing operations for more than 5.5 million meters across California. Under the 2018 agreement, Calpine also provided DCE with upfront capital for start-up costs, primarily focused on outreach and marketing, and a required bond with the California Public Utilities Commission (CPUC). Calpine has provided support for DCE through the initial program launch, including mass enrollment phases, and now is the first point of contact for customer inquiries. More detailed and complex customer questions and issues are then elevated by Calpine to DCE staff.

The existing agreement with Calpine was effective for five years, through February 26, 2025. Given the length of the contract and the needs that DCE has today, DCE staff in late 2024 began conversations with Calpine staff to discuss a new agreement before the next renewal occurs. The contract had an automatic, annual renewal clause. Rather than extend for an entire year, and knowing the negotiations for a new contract were ongoing, DCE's Executive Director in February signed a two-month amendment to the contract extending it through April 30, 2025 in lieu of the entire 12 months.

DCE staff is now presenting a restated agreement with Calpine for the Board's approval. The notable differences include the following:

- Cleaning up the scope of work to address DCE's needs for electronic data exchange services, including requests to and from Southern California Edison (SCE); customer information system services; interactive voice response systems on the customer service line; and coordination of billing administration with customers;
- Incorporating modest adjustments to the services fees related to data management, the bill comparison tool, forecasting services, and customer analytics;
- Setting the term of the contract to three years, with an effective date of May 1, 2025, and allowing for an additional three years;
- Creating improved communication between Calpine and DCE staff to ensure staff is promptly notified of customers' billing questions and any opt outs by major commercial customers; and
- Establishing a community benefits grant program for the DCE service territory, where Calpine rebates two percent of the annual data management service fees collected directly to local 501c(3) organizations for the purpose of promoting economic development, local project

development, grid resiliency, residential tenant interests and other areas that support the mission of DCE.

Staff would note that the parent Calpine Corp. is currently in the process of being acquired by Constellation Energy, a leading producer emissions-free electricity. The nearly \$30 billion offer was announced in January. Calpine has assured DCE staff that there would not be any changes to the services provided to DCE, and DCE staff also checked with other CCA staffs about how this was being addressed in any updated contracts. The new contract with DCE will provide for clauses that address any name changes moving forward. DCE staff also researched and explored the other firms CCAs have used for these services, and found the options to be limited and likely to cost more for DCE.

DCE staff recommends the Executive Director be authorized to execute the restated agreement with Calpine Community Energy consistent with terms detailed in this staff report. This authorization would also authorize the Executive Director and/or Legal Counsel to make minor, clarifying changes prior to execution.

Fiscal Analysis: Costs estimated for one year of the data management services under the new agreement would be approximately \$565,000. This represents an increase of approximately \$25,000 annually from the prior agreement. In addition, DCE will provide \$25,000 annually for a web-based cost comparison tool.

Notably, DCE staff negotiated a two percent rebate for the proposed community benefits grant program. This is not a benefit included in the existing contract, and it would equate to \$11,000 or more to non-profit organizations in DCE's service territory.

Costs related to the Calpine agreement will be included in the Fiscal Year 2025-26 Budget and future budgets.

Attachment: Calpine – DCE Professional Services Agreement (Draft)

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("**Agreement**") is entered into effective May 1, 2025 ("**Effective Date**"), by and between Calpine Community Energy, LLC ("**DM Services Provider**" or "**Consultant**") and Desert Community Energy, a California joint powers authority and community choice aggregator ("**DCE**"). Each party listed above may be referred to individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

WHEREAS, DCE, a public agency formed by a Joint Powers Agreement ("**DCE JPA**") pursuant to Government Code section 6500 *et seq.*, seeks to continue to operate a Community Choice Aggregation ("**CCA**") program for its DCE member jurisdictions and their respective residents and businesses ("**Program**");

WHEREAS, DCE and DM Services Provider entered into a Professional Services Agreement, dated February 26, 2018, for certain data manager services; and

WHEREAS, DCE and DM Services Provider intend to enter into a new, revised agreement for DM Services Provider to provide specified data manager services as described in Exhibit A, attached hereto ("**Data Manager Services**").

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual benefits, obligations, covenants, and consideration, the receipt and sufficiency of which are hereby acknowledged, DM Services Provider and DCE hereby agree as follows:

1. **SCOPE**. Services. Subject to the terms and conditions of this Agreement and during the term of this Agreement, DM Services Provider shall provide to DCE the services described in Exhibit A (collectively, the "Services"). From time to time the parties may amend the Services, which upon execution by both parties, shall be subject to the terms and conditions of this Agreement.

2. **CONDITIONS TO DM SERVICES PROVIDER'S PERFORMANCE.**

- (a) **Information and Assistance.** Upon DM Services Provider's reasonable request, DCE shall provide such information and assistance as is reasonably required for DM Services Provider to provide the Services. If DCE fails to provide DM Services Provider with such requested information or assistance, then DM Services Provider shall continue to provide in a timely manner any such portion(s) of the affected Services that DM Services Provider can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by DCE to provide DM Services Provider with such information or assistance shall not constitute an Event of Default; provided, however, that DM Services Provider's performance or lack of performance under this Agreement shall be excused to the extent that it is hindered, prevented or impacted as a result of DCE's failure or inability to provide such information or assistance.

- (b) Notification. DCE shall notify all other relevant parties, including but not limited to Supplier, the Utility Distribution Company ("UDC"), which is currently Southern California Edison, and DCE's lender(s), as necessary, of the existence of this Agreement and DM Services Provider's role as contemplated in this Agreement.

3. **FEES AND BILLING.**

- (a) Fees. DCE shall pay all fees due in accordance with Exhibit B, attached hereto.
- (b) Billing and Payment Terms. Unless otherwise indicated in the applicable Exhibit, DM Services Provider shall submit an itemized invoice to DCE monthly for all fees related to Services performed during the previous month to the DCE contract administrator specified in Section 31. Payment shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars. Late payments hereunder shall accrue interest at the lower of the rate of one percent (1%) per month, or the highest rate allowed by law.
- (c) Taxes. Payments due to DM Services Provider under this Agreement shall be net of all sales, value-added, use or other taxes.

4. **REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Exhibit; (iii) the execution, delivery and performance of this Agreement and each exhibit are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement, each exhibit, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt, and (vi), in the case of DM Services Provider, that it has the qualifications, experience and ability to perform the Services described in the applicable Exhibit.

5. **INDEMNIFICATION.** Subject to the limitations herein, each party to this Agreement (each an "**Indemnifying Party**") agrees, to the fullest extent permitted by law, to indemnify, hold harmless, protect and defend the other party (the "**Indemnified Party**"), and the Indemnified Party's governing board, supervisors, officers, directors, agents, employees, and/or volunteers from and against any and all third-party liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any third-party person or entity, to the extent resulting from the Indemnifying Party's breach of any material term of this Agreement, or the Indemnifying Party's negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from the Indemnified Party's breach of any material term of this Agreement, or the Indemnified Party's negligence or willful misconduct in connection with the performance of this Agreement; in addition, for purposes of this Article, each Indemnifying Party shall be responsible for the

negligent acts and/or omissions and/or willful misconduct of any person or entity over which it exercises direction and control, including without limitation, subcontractors and employees. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party's approval, which shall not be unreasonably withheld, conditioned or delayed. Each Party's indemnification obligations under this Article are conditioned upon the Indemnified Party: (i) promptly notifying the Indemnifying Party of any claim in writing; (ii) cooperating with the Indemnifying Party in the defense of the claim; and (iii) granting the Indemnifying Party sole control of the defense or settlement of the claim. The indemnity obligation set forth in this Section 5 shall survive termination of this Agreement.

6. **TERM.** This Agreement shall be effective on the Effective Date and shall terminate on April 30, 2028. The Agreement thereafter shall renew for a three (3) year term ("**Term Extension**") upon DCE providing DM Services Provider written notice at least six (6) months in advance of the renewal and DM Services Provider providing its express written agreement to such renewal or as otherwise agreed to by the Parties.

7. **TERMINATION.**

- (a) **Termination for Cause.** If any one of the following events (each an "**Event of Default**") occurs with respect to a Party, then the other Party (non-defaulting Party) may i) terminate this Agreement, and ii) seek direct, actual damages incurred but solely to the extent there are no corresponding liquidated damages. An Event of Default means (i) with respect to DCE, DCE fails to pay amounts due hereunder and such failure continues for seven (7) Business Days following written notice from DM Services Provider; (ii) either Party defaults in the observance or performance of any of its material covenants, obligations or service level agreements in this Agreement and such default continues uncured for thirty (30) Business Days following written notice to the defaulting Party; *provided, however*, that in the case of DM Services Provider, that for such events that may require more than thirty (30) Business Days to cure, DM Services Provider shall have such additional time as may be reasonably be required to effect such cure, provided that DM Services Provider diligently and continuously pursues such cure and DCE provides commercially reasonable consent to the additional time; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they fall due; or (iv) with respect to DCE, DCE fails to satisfy UDC's credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) Business Days following written notice to DCE from UDC.
- (b) **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (i) DM Services Provider shall immediately cease providing Services hereunder; and (ii) any and all payment obligations of DCE under this Agreement, including, without limitation, any and all fees related to the Services for the balance of the term, will become due within sixty (60) days.

- (c) Transition of Responsibilities. If DCE provides Consultant at least six (6) months written notice of termination or prior to the expiration of the Agreement that DCE will be transitioning all or a portion of the Services to another data manager services provider, then the Parties shall work together to create a "Transition-Out Plan" for transitioning the provision of Services, or a portion thereof. Any such Transition-Out Plan is subject to further mutual written agreement of the Parties. To the extent the development of such plan or the obligations for the DM Services Provider thereunder extends past the Term of the Agreement, additional fees and rates will be invoiced as further agreed to by the Parties in the Transition Plan.

8. **LIMITATION ON DAMAGES.** FOR ANY BREACH OR DEFAULT HEREOF FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES INCURRED ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 13. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WITH THE EXPRESS EXCLUSION OF ANY CLAIM FOR BREACH OF CONFIDENTIALITY, IN NO EVENT SHALL DM SERVICES PROVIDER'S LIABILITY TO DCE HEREUNDER EXCEED THE LESSER OF \$500,000 OR THE AMOUNT OF THE FEES PAID TO DM SERVICES PROVIDER BY DCE FOR THE SERVICES PROVIDED HEREUNDER FOR THE TERM OF THE AGREEMENT. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

9. **FORCE MAJEURE EVENT.** A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate

the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental DCE. Notwithstanding the foregoing, Force Majeure Events shall expressly not include lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

10. **DISPUTE RESOLUTION.** The Parties shall meet, as commercially reasonable, and confer together in good faith regarding any dispute, controversy or claim (each, a "Dispute") arising out of or relating to this Agreement. A meet and confer shall occur within ten (10) business days of any Dispute whereby the Parties agree to cooperate in good faith to resolve the Dispute, and may use a mutually agreeable third party to resolve such Dispute. In no event shall either Party be delayed or impeded from exercising any of its rights at law or equity, including, without limitation, petitioning a court for provisional relief, including injunctive relief, prior to invoking the meet and confer resolution process.

11. **RELATIONSHIP OF PARTIES.** DM Services Provider is an independent contractor and this Agreement will not establish any relationship or partnership, joint venture, employment franchise or agency between DM Services Provider and DCE. Neither DM Services Provider nor DCE will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

12. **ASSIGNMENT OF RIGHTS.** Neither Party shall assign any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party, except it may be assigned or transferred without such consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition; or (ii) by either Party to any wholly-owned affiliate; *provided, however*, that in the event of such a non-consent transfer, notice shall be given to the other Party within forty-five (45) days after the conclusion of the transfer memorializing the transfer and identifying the successor in interest. Any request for consent to assign shall be made in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

13. **FURTHER ACTIONS.** The Parties agree to take all such further actions and to execute

such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

14. **CONFIDENTIALITY.**

- (a) The Parties acknowledge that certain information and materials exchanged during the term of this Agreement, including this Agreement, may contain proprietary and Confidential Information of the disclosing Party. "**Confidential Information**" means and includes any and all information including, without limitation, trade secrets, analyses, compilations, forecasts, studies, techniques, plans, designs, cost data, pricing data, financial data, customer information and employee information, disclosed by a Party to the other party before, on, or after the Effective Date which relates in any manner, directly or indirectly, to the disclosing Party and/or its business, whether such information is disclosed in writing, verbally, electronically, or otherwise. Notwithstanding anything in the foregoing to the contrary, Consultant recognizes and understands that DCE is governed by the California Public Records Act, and that Authority may be required to release information provided by Consultant, including, without limitation, information marked confidential by Consultant, as required by law. For the avoidance of doubt, Confidential Information shall specifically include, but not be limited to (i) any information disclosed in written form and clearly marked "Confidential," and (ii) information which would reasonably be considered proprietary, trade secret, and confidential. The receiving Party agrees that such Confidential Information shall be held confidential, to the extent permitted by law, under the same safeguards as it treats its own confidential information and that it will not use, copy or disclose the Confidential Information other than for the sole purpose of supporting or performing the services in connection with this Agreement. The Confidential Information may be disclosed to officers, directors, purchasers, prospective purchasers, permitted assignees, lenders employees, counsel, auditors, agents, representatives or DM Services Providers (who shall agree to be bound by the terms of this Section) of the receiving Party on a need to know basis, and shall not be disclosed to any third party without first having obtained the written permission of the disclosing Party. Confidential Information shall specifically exclude any information which the receiving Party can show (i) was known to or was independently developed by the receiving Party without access to or use of the Confidential Information of the disclosing Party; (ii) was disclosed to the receiving Party in good faith by a third party who had the right to make such disclosure; (iii) was made public by the disclosing Party, or was established to be part of the public domain other than as a consequence of a breach of the Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information as shown by documents and other competent evidence in the receiving Party's possession.

If the receiving Party is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, regulatory proceeding or similar legal or regulatory process to disclose any Confidential Information supplied to the receiving Party by the disclosing Party, the receiving Party shall provide the disclosing Party with prompt notice of such request(s) in order for

the disclosing Party to seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. However, disclosure pursuant to a legal order or statutory obligation shall not constitute a breach of this Section. The Parties agree this Agreement and any Task Orders executed in connection therewith are subject to the requirements of the California Public Records Act.

- (b) DM Services Provider acknowledges that the confidential information about DCE's customers to which it will have access under this Agreement could give it or a third party an unfair competitive advantage in the event that OM Services Provider or any third party were to compete with DCE in the provision of electrical or other services to DCE's customers. DM SERVICES PROVIDER AGREES THAT IT WILL NOT USE ANY INFORMATION IT RECEIVES REGARDING DCE CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. DM Services Provider agrees not to use any of the CCA data provided to it by DCE for its own marketing purposes. DM Services Provider shall not use such customer information to compete with DCE in any manner, except as provided herein below. Notwithstanding anything in the foregoing to the contrary, however, DM Services Provider is not prohibited from conducting its business with potential customers in DCE's territory, either due to a business opportunity already known to DM Service Provider as of the date of this Agreement or made known to DM Services Provider in the ordinary course of DM Services Provider's business other than Services under this Agreement. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that DM Services Provider receives from a third party in the ordinary course of DM Services Provider's business other than performance of the Services under this Agreement, shall not be deemed to be confidential information as between DCE and DM Services Provider, for purposes of this Agreement, even if it is the same or similar information such as would be confidential information pursuant to this Agreement.

Upon termination of this Agreement, DM Services Provider shall (i) return all documents and other materials received from the DCE and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in DM Services Provider's possession that contain DCE customer data, and (iii) deliver to DCE a certificate, signed by an authorized representative of DM Services Provider, stating that DM Services Provider has returned or destroyed all such documents and materials; provided, however, that DM Services Provider need not destroy confidential information necessary for tax, billing or other financial purposes, to be used solely for such purposes, or that is found in electronic format as part of a DM Services Providers off-site or on-site data storage/archival/retention process or that DM Services Provider is required to retain pursuant to bona fide records retention policy, law, or regulation. The Parties agree that money damages would be an inadequate remedy for breach of the provisions in this Section 13 and that either Party shall be entitled to seek equitable relief in connection therewith and shall be entitled to recover any damages for such breach as may be provided by law.

- (c) Exclusion for CCA Program customer account, usage and billing information. DCE

retains sole ownership of, and full access to (as reasonably requested from DM Services Provider), account, usage and billing information for customers of the CCA Program. DCE may share all such data with its Supplier or other parties and will assume full responsibility for compliance with customer data protection requirements in doing so. At the termination of this Agreement, Consultant shall provide to DCE all such information and data requested by DCE, to the extent such information and data is owned by DCE, in an electronic format as kept in the ordinary course of business, and as reasonably agreed to by the Parties. DM Services Provider may use anonymized, aggregated data, which contains no identifying data and cannot be reverse engineered to identify DCE or any customer. At the termination of this Agreement, DM Services Provider shall provide to DCE all such information and data requested by DCE in an electronic format as kept in the ordinary course of business, and as reasonably agreed to by the Parties.

15. **COMPLIANCE WITH LAW.** Each Party shall be responsible for compliance with all state and federal laws or regulations applicable to the Services being provided under this Agreement. If either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the Parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only; the remaining provisions of this Agreement will remain in full force and effect. Any such termination shall not constitute a basis for termination for cause as defined in Section 6, above.

16. **CHOICE OF LAW.** This Agreement, and the rights and duties of the Parties arising hereunder, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction. Venue shall be governed by a court of competent jurisdiction in Riverside County, California.

17. **INTEGRATION.** This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

18. **WAIVER.** No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

19. **GOVERNMENTAL ENTITY.** DCE shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Except as provided in Section 7(a) above, DCE's failure to obtain any necessary budgetary approvals, appropriations, or funding for its obligations under this Agreement shall not excuse DCE's performance hereunder.

20. **NOTICES.** All notices and other communications required under this Agreement shall be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or email and shall be deemed to have been duly given (i) on the date of service,

if served personally on the person to whom notice is to be given; (ii) on the date of service if sent by facsimile or email, provided the original is concurrently sent by first class mail, and provided that notices received by facsimile or email after 5:00 p.m. shall be deemed given on the next Business Day; (iii) on the next Business Day after deposit with a recognized overnight delivery service; or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

If to DM Services
Provider:

Calpine Community Energy, LLC
Attn: Legal Dept.
401 West A Street, Suite 500
San Diego, CA 92101
619-684-8251 (Phone)
619-684-8350 (Fax)

If to DCE:

Desert Community Energy
Tom Kirk, Executive Director
73710 Fred Waring Drive #200
Palm Desert, CA 92260
(760) 346-1127

With Copies to:

Ryan M. F. Baron
Best Best & Krieger LLP
18101 Von Karman Ave., Suite 1000
Irvine, CA 92612
(949) 263-6568
Ryan.baron@bbklaw.com

21. **LIMITATIONS.** Nothing contained in this Agreement shall in any way limit DM Services Provider from marketing any of its products and services outside of DCE's service territory.

22. **THIRD PARTY BENEFICIARIES.** The Parties agree that there are no third-party beneficiaries to this Agreement either expressed or implied.

23. **ATTORNEYS' FEES.** In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing party.

24. **NONDISCRIMINATORY EMPLOYMENT.** In connection with the execution of the Agreement, the DM Services Provider shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons. Parties agree that as a condition precedent to entering into this Agreement, DM Services Provider is in compliance and will comply during duration of this Agreement with

the non-discrimination provisions set forth under California Law for state contracting parties including, but not limited to, Government Code Section 12990 *et seq.* and Public Contracts Code Section 10295.35.

25. **HEADINGS.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement.

26. **SEVERABILITY.** If any paragraph, section, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining paragraphs, sections, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

27. **CONTRACT ADMINISTRATORS.** Each Party shall appoint a contract administrator that will be responsible for administering this Agreement including having the DCE to transmit instructions, receive information, and implement the Agreement on behalf of the respective party (the "**Contract Administrator**"). The Contract Administrators shall be identified in this Agreement. Either Party may change its respective Contract Administrator by giving advance written notice to the other Party, consistent with the terms of the Notice Section of this Agreement.

Contract Administrator:

DCE:

Allen McMillen, Contract Analyst II (760) 346-1127
amcmillen@cvag.org

Calpine Community Energy, LLC:

Joshua Brock, Vice President
Joshua.Brock@calpine.com

28. **WARRANTY.** Each Party represents and warrants to the other Party that it is and will remain duly organized, validly existing, and in good standing under the laws of the state of its organization throughout the term of this Agreement, and that the execution, delivery and performance of this Agreement are within its express or implied statutory powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents or applicable laws.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Effective Date provided herein.

CALPINE COMMUNITY ENERGY, LLC

DESERT COMMUNITY ENERGY

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

In consideration of the payments set forth in Exhibit B, DM Services Provider shall provide the following Services:

1. Electronic Data Exchange Services:

- a. Process DCE Service Requests (CCASRs) from/to SCE which specify the changes to a customer's choice of services such as enrollment in DCE programs, customer initiated returns to bundled utility service or customer- initiated migration to direct access service (814 Electronic Data Interchange Files).
- b. Obtain all customer usage data from SCE's Metered Data Management Agent (MDMA) server to allow for timely billing (according to SCE requirements) of each customer (867 Electronic Data Interchange Files).
- c. Maintain and communicate the amount to be billed by SCE for services provided by DCE (810 Electronic Data Interchange Files).
- d. Receive and maintain all data related to payment transactions toward DCE charges from SCE after payment is received by SCE from customers (820 Electronic Data Interchange Files).
- e. Reconcile cases of failed 814s to ensure timely enrollment in DCE service.
- f. Established fail safes to ensure prompt corrective action is taken when any EDI transaction process is disrupted or disconnected.
- g. Service Levels for Electronic Data Exchange Services:
 - i. DM Services Provider will use commercially reasonable efforts to perform such Services in an accurate and timely manner.
 - ii. To the extent there is an error in Electronic Data Exchange Services, DM Services Provider will use commercially reasonable efforts to correct such error in a timely manner once the error is known to the Consultant, to the extent such correction is necessary.
 - iii. Correction of the error, as described above, is the sole remedy for a breach or default in completing Electronic Data Exchange Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages).

2. Qualified Reporting Entity (QRE) Services:

- a. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between DCE and Data Management Provider, serve as QRE for certain locally situated, small-scale renewable generators or other distributed energy resources supplying electric energy to DCE through a feed-in tariff (FIT) or other mechanism.
- b. Performance of the Qualified Reporting Energy Services is dependent upon timely receipt of data from SCE and/or the Generation Provider.
- c. DM Services Provider will, to the extent such information is available, submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on DCE's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
- d. Provider shall receive applicable electric meter data from SCE for DCE distributed energy resource projects, consistent with SCE's applicable meter servicing agreement, and shall provide such data to DCE for purposes of performance tracking and invoice creation.
- e. Service Levels for Qualified Reporting Entity Services:
 - i. DM Services Provider shall use commercially reasonable efforts to perform QRE Services in an accurate and timely manner.
 - ii. However, DM Services Provider is not responsible or liable for any delays or errors in the performance of the Services that are due solely to the actions or inactions of SCE or the generation provider.

3. Customer Information System Services:

- a. Maintain an accurate database of all eligible accounts who are located in the DCE service area and identify each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer DCE as mutually agreed to by parties from time to time.
- b. Allow DCE and DCE contact center staff to have functional access to all online databases to add customer interactions and other account notes.
- c. Allow DCE to view customer email or written letter correspondence within online database.
- d. Maintain viewing access, available to appropriate DCE staff, via the CRM to view SCE invoice statements for DCE customers, made available by SCE, for a period of up to 18 months.
- e. Maintain and communicate as needed record of customers who have been offered service with DCE but have elected to opt out, either before or after starting service with DCE.

f. Support up to one base product and one premium product being offered by DCE. Additional DCE Energy Programs shall be subject to fees as described in Appendix B, Section 4, 'Additional Deliverable Pricing', as well as DM Services Provider and DCE agreement on additional scope of work determined by a requirements gathering process.

g. Maintain and communicate as needed records of Net Energy Metering and Solar Billing Plan credits and generation data for customers to be posted on bills and settled annually and terminated accounts quarterly. To the extent there are any changes to the Net Energy Metering and/or Solar Billing Plan policy (as of the date of execution), such work will be considered Additional Services and subject to further agreement.

h. When requested by DCE, place program charges and/or credits on the relevant customer account, identified by PODID and Contract Account # or agreed upon unique identifier.

i. Identify and provide tracking options for customers participating in various DCE programs in database.

j. Include various program payment information in all relevant reports.

k. Create and maintain integrated forms ("web-forms or "iFrames") for the DCE website so that customers may change their account status to enroll or opt out of various DCE programs.

l. Allow for customization of web-form content upon request by DCE. Such customization requests may be subject to additional fees as described in Exhibit B, Section 4, 'Additional Deliverable Pricing'.

m. Maintain all customer data according to DCE's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions, including D.12-08-045 as it may be modified, including a daily backup process.

n. Maintain a Data Management Provider Security Breach Policy.

o. Complete a Service and Organization Controls (SOC) 1, Type II audit on an annual basis and make it available for review.

p. Service Levels for Customer Information System Services:

i. DM Services Provider will use commercially reasonable efforts to perform such Services in an accurate and timely manner and to provide for the system access and forms identified above.

ii. If there is a system outage or unavailable or unresponsive form, then DM Services Provider will use commercially reasonable efforts to make such systems or forms available and responsive, as soon as practicable. This is the sole remedy for breach or default of Customer Information Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the

exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Customer Information System Services" section of the Agreement.

4. Interactive Voice Response (IVR) System Services

- a. Provide a platform for IVR self-service and track how many customers start and complete self-service options.
- b. Include self-service program options such as opt-outs, opt-ups, opt-downs in DCE service as requested.
- c. Provide Spanish language translation for all opt actions.
 - i. In the event outside services are required to translate prompts or scripts into additional languages specified by DCE, any charges incurred by DM Services Provider as a result of these will be passed by DM Services Provider onto DCE per Appendix B, Section 4.
- d. Evaluate customer satisfaction with IVR service through voluntary customer surveys that ask general questions about call resolution and customer satisfaction with the service received.
- e. Provide and track statistics from IVR calls received in all languages. Reports of daily statistics are provided at a regular cadence.
- f. Update IVR scripts as requested.
 - i. Allow for modifications and/or additions to DCE's IVR recordings and self-service system configuration once annually following initial IVR setup and configuration. Modifications and/ or additions to the IVR recordings and self-service system configuration more than once per calendar year may be subject to additional fees beyond DCE's per meter per month service fee, in accordance with the hourly labor costs specified in Exhibit B, Section 4.
- g. Provide and maintain an agreed to backup plan in the event of a system outage.
- h. Implementation of such backup plan is the sole remedy for breach or default of the IVR System Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Interactive Voice Response System Services" section of the Agreement.

5. Customer Contact Center Services

- a. Staff a call center with dedicated agents serving only DCE between 8 AM and 5 PM PPT, Monday through Friday, excluding DCE and DM Services Provider holidays.

- b. Provide sufficient call center staffing to meet the requirements set forth herein, including designating DCE-specific agents as needed to provide full functionality.
- c. Provide Subject Matter Experts available to manage escalated calls between 8 AM and 5 PM PPT, Monday through Friday, excluding DCE and DM Services Provider holidays ("Regular Business Hours").
- d. Provide callers with the estimated hold time, if applicable, and provide an automated 'callback' option for callers who will be put on hold for an estimated five minutes or longer.
- e. Record all inbound calls and make recordings available to DCE staff upon request.
- f. Track call center contact quality with criteria including:
 - i. Use of appropriate greetings and other call center scripts
 - ii. Courtesy and professionalism
 - iii. Capturing key customer data
 - iv. Providing customers with correct and relevant information
 - v. First-contact resolution
 - vi. Accuracy in data entry and call coding
 - vii. Grammar and spelling in text communication (email and chat)
- g. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received
- h. Respond to customer emails
- i. Receive calls from DCE customers referred to Provider by SCE and receive calls from DCE customers choosing to contact Provider directly without referral from SCE.
- j. Provide the call center number on SCE invoice allowing DCE customers to contact the call center. Collect and/or confirm current email, mailing address, and phone number of customers and add to or update database during inbound call.
- k. Service Level Agreement and Liquidated Damages for Customer Contract Center Services:
 - i. DM Services Provider will ensure a minimum of 75% of all calls will be answered within 60 seconds during Non-Enrollment Periods.
 - ii. DM Services Provider will ensure 99% of voicemail messages are answered within one (1) Business Day and provide a report to DCE that substantiates this requirement has been met.

- iii. DM Services Provider will ensure 99% of emails receive an immediate automated acknowledgment and provide a report to DCE that substantiates this requirement has been met.
- iv. DM Services Provider will ensure 95% of emails receive a customized response within one (1) Business Day and provide a report to DCE that substantiates this requirement has been met.
- v. DM Services Provider will ensure 99% of emails receive a customized response within three (3) Business Days and provide a report to DCE that substantiates this requirement has been met.
- vi. DM Services Provider will maintain no greater than 10% abandon rate for all Non-Enrollment Period calls.
- vii. For any month in which DM Services Provider has failed to meet the performance standards above for Customer Contact Center Services and DM Services Provider has failed to cure in compliance with Section 7(a) above, then DCE shall have the right to reduce payment of any invoice by \$6,000 as liquidated damages, as provided for below.
- viii. Prior to exercising this right, the DCE shall provide written notice to DM Services Provider that identifies the performance standard(s) that DCE believes have not been met and states DCE's intent to invoke this subsection if the failure to achieve such performance standards are not remedied within thirty calendar days.
- ix. The Parties shall then confer to establish a plan to remedy such failure, which plan may provide a different deadline for remedying of the failure at the mutual agreement of the Parties.
- x. In the event that DM Services Provider is unable to achieve such remedy by the deadline in Section 7(a), DCE may exercise its rights under this subsection to reduce payment of each subsequent invoice by \$6,000 until the failure is remedied.
- xi. The foregoing reduction in invoice payment shall be limited to \$6,000 per month regardless of how many performance standards are not met for a total of three months.
- xii. The remedy described above is the sole and exclusive remedy for a breach or default of the Customer Contact Center Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Customer Contact Center Services" section of the Agreement.

6. Billing Administration Services:

- a. Maintain a table of rate schedules offered by DCE to its customers.
- b. Send certain DCE program charges and/or credits as a separate line item to SCE for placement on monthly bill during term of repayment using existing functionality.
- c. Apply SCE account usage for all DCE customers against applicable rate to allow for customer billing.
- d. Review application of DCE rates to SCE accounts to ensure that the proper rates are applied to the accounts.
- e. Complete cost verification of all 810 invoices before they are sent to SCE for billing.
- f. Timely submit billing information for each customer to SCE to meet SCE's billing window.
- g. Develop and support different rate versions based on Power Charge Indifference Adjustment (PCIA) vintage year.
- h. Develop and support billing accounts based on jurisdictions.
- i. Develop and implement custom rate amendments for various rates as needed, and in accordance with Section 7(d) below.
- j. Develop and support billing special accounts on a contract savings discount.
- k. DM Services Provider will provide support during rate changes, such as validation of rate factors, and provide support when discussing rate projects and issues with the IOUs.
- l. Assist with annual settlement process for Net Energy Metering (NEM) and Solar Billing Plan (SBP) customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to DCE or DCE designated printer.
- m. Three (3) times per year, perform a settlement process for NEM and SBP customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to DCE or DCE designated printer.
- n. Provide platform capability and support to bill both NEM and Solar Billing Plan (SBP) agreed upon tariff structures.
- o. Provide and maintain a data portal platform that provides clients access to detailed customer data via query.
- p. Provide customer mailing list to DCE designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
- q. Provide email alerts to DCE within seven (7) days of all large commercial account opt-out.

r. At DCE's direction, send a mailing list to DCE designated printer of customers that are overdue. If no payment is received from the customer after a certain amount of time, issue a CCASR to return customer to SCE at DCE's direction.

s. Service Levels for Billing Administration and Liquidated Damages. In the performance of the Billing Administration Services listed above:

- i. DM Services Provider will maintain at least a 99% billing accuracy rate during any twelve (12) month period.
- ii. DM Services Provider will notify DCE of any billing issue or error that affects customers that is caused by Contractor or its systems within 72 hours after validating that the error occurred. DM Services Provider shall correct any billing errors within two (2) billing cycles after discovery of the error.
- iii. DM Services Provider will not be liable for any errors in the Billing Administration Services that can be remedied by customer rebill(s), as allowed under applicable rules and regulations).
- iv. DM Services Provider will not be liable for billing errors that result in an underbilled amount of \$10,000 or less.
- v. If an error in Billing Administration Services caused by DM Services Provider results in an underbilled amount of \$10,000 or more or affects more than 1% of all customers, then DM Services Provider will not be liable for either a) 50% of the underbilled amount or b) \$100,000 whichever is less. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Billing Administration Services" section of the Agreement.

The remedies described above are the sole and exclusive remedy for a breach or default of the Billing Administration Services.

7. Rate Schedule Maintenance Services

a. Maintain a table of Rate Schedules, offered by DCE to its customers, within DM Services Provider's billing system.

1. Complete Value Only Rate Changes within ten (10) Business Days, excluding holidays, once DM Services Provider has confirmed it is in receipt of a valid Rate Template.
2. Complete Structural Rate Changes within forty (40) Business Days, excluding holidays, once DM Services Provider has confirmed it is in receipt of a valid Rate Template.

3. A Rate Template will be considered valid if it meets the expected formatting requirements as set forth by DM Services Provider and acknowledged by DCE, and the Rate Schedules it contains align with published CCA rate schedules. Upon receipt of a Rate Template, DM Services Provider will review it per these guidelines and after DCE has corrected any errors, if present, DM Services Provider will communicate to DCE that a valid Rate Template has been received and work will commence as per the timelines indicated above.
4. Should DCE submit updates after DM Services Provider has begun work on a valid Rate Template, DCE understands this may be considered a new Rate Change.
 - b. Conduct an unlimited number of DCE and/ or SCE initiated Value-only Rate Changes per calendar year.
 - c. Conduct an unlimited number of SCE initiated Structural Rate Changes per calendar year.
 - d. At the request of DCE, DM Services Provider will perform additional Custom Rate Changes at a mutually agreed upon fixed fee determined by the terms described in Exhibit B, Section 4, 'Additional Deliverable Pricing'.
 - e. Service Levels for Rate Schedule Maintenance Services:
 - i. DM Services Provider will use commercially reasonable efforts to perform such Services in an accurate and timely manner.
 - ii. To the extent there is an error in Rate Schedule Maintenance Services, DM Services Provider will use commercially reasonable efforts to correct such error in a timely manner once the error is known to the DM Services Provider.
 - iii. Correction of the error in the DM Services Provider's billing system, as described above, is the sole remedy for a breach or default in the Rate Schedule Maintenance Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Rate Schedule Maintenance" section of the Agreement.

8. **Reporting Services:**

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
IVR Statistics	Weekly	SFTP/Email
Contact Center Statistics	Weekly	SFTP/Email
Cash Receipts	Weekly, Monthly	SFTP
Utility User Tax (UUT) where applicable	Monthly	SFTP
Invoice Summary Report	Weekly, Monthly	SFTP
Monthly Transaction Summary	Monthly	SFTP
Sent to Collections	Monthly	SFTP
Snapshot	Weekly	SFTP
Snapshot with Addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Taxes summary report	Monthly	SFTP
Transactions summary report	Monthly	SFTP
Customer credits – detailed report	Monthly	SFTP

a. DM Services Provider shall also assist DCE, as needed, in compiling various customer sales and usage statistics that may be necessary to facilitate DCE's completion of requisite external reporting activities. Such statistics will likely include annual retail sales statistics for DCE's customers, including year-end customer counts and retail electricity sales (expressed in kilowatt hours) for each retail service option offered by DCE. The sole remedy for a breach or default of Reporting Services is a corrected and reissued report(s). For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Reporting" section of the Agreement.

9. **Ticketing Support System Services**

a. DM Services Provider shall provide DCE staff with access to a web-based, ticketing system that DCE staff may use to submit service requests for certain deliverables to be provided by DM Services Provider. Any outages in such ticketing system will be addressed as soon as practicable.

This is the sole remedy for a breach or default in the Ticketing Support System Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Ticketing Support System" section of the Agreement.

10. Settlement Quality Meter Data Services:

a. DM Services Provider shall provide DCE or DCEs designated Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from SC's by the California Independent System Operator (CAISO).

b. When Advanced Metering Infrastructure (AMI) data is available, and at DCE's discretion, provide AMI-based SQMD settlements for improved accuracy.

c. Upon DCE's request, DM Services Provider shall submit the SQMD directly to the CAISO on behalf of DCE or DCE's designated SC.

d. Service Level Agreement and Liquidated Damages for Settlement Quality Meter Data Services.

i. DM Services Provider will use commercially reasonable efforts to perform the Settlement Quality Meter Data Services in an accurate and timely manner.

ii. DM Services Provider will use commercially reasonable efforts to remedy any breach or default by DM Services Provider of the Settlement Quality Meter Data Services but in no event will DM Services Provider's liability exceed \$20,000.

iii. The remedies described above are the sole and exclusive remedy for a breach or default of the Settlement Quality Meter Data Services. For avoidance of doubt, the foregoing remedy shall be subject to the cure period limits described in Section 7(a) (Termination) and any damages incurred outside any applicable cure period for such error shall be governed by Section 8 (Damages). Furthermore, such remedy shall not be deemed to be the exclusive remedy for a breach or default by DM Services Provider for other Services not listed in this "Settlement Quality Meter Data" section of the Agreement.

11. Additional Services:

a. Forecasting Services

i. Subject to the terms in Exhibit B, Section 1.c, Consultant may provide, or cause to be provided, short-term, long-term, and/or renewable generation forecasting services.

b. Customer Analytics and Program Management Services

- i. Subject to the terms in Exhibit B, Section 1.d, Consultant may provide, or cause to be provided, capabilities that include customer targeting, program performance measurement and verification, program implementation and management, and other analytics necessary to design, implement, measure, and manage customer programs efficiently.

12. Data Retention

- a. DM Services Provider is limited in its ability to perform the services described below by the availability and timeliness of data from the IOU(s). As such, DM Services Provider is not liable or responsible for a breach or default in the Data Retention Services to the extent such breach or default is due to the sole negligence, gross negligence, or willful misconduct of the applicable IOU or any other third-party.
- b. Raw EDI files shall be retained for a period of three years from the date of receipt or creation, unless otherwise required by applicable laws or regulations.
- c. Maintain and provide as needed historical billing volume data on all customers for a time period equal to the lesser of either (a) the start of service to present or (b) three years.
- d. Record all inbound calls and make recordings available to DCE staff upon request. Maintain an archive of such recorded calls for 24 months from creation date.
- e. Maintain an accessible archive of utility consolidated, invoice statements ("Blue Bills") for all DCE customers from the start of DCE service or a period of no less than five years.
- f. IOU provided reports shall be retained for three years from the date of creation or receipt.
- g. Interval Data received through EDI 867 transactions shall be retained for a period of three years.
- h. Interval Data retrieved from SCE's Snowflake platform shall be retained for a period of 30 days from the date of retrieval.

13. Liquidated Damages.

- a. To the extent the provisions above contain liquidated damages as the, or part of the, sole remedy for breach or default, the Parties agree that DM Services Provider's breach or default of the Services above may cause DCE to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis of recovery of direct or actual damages and such liquidated damages represent a fair, reasonable and appropriate estimate thereof. Such liquidated damages are intended to represent estimated direct, actual damages and are not intended as a penalty.

14. **Definitions**

- a. **"Ad Hoc Request"** or **"Ad Hoc"** refers to services, including: new services, additional services or significant modifications to current services, requested by DCE that fall outside the scope of what DM Services Provider is contractually obligated to provide under the terms of this Agreement. In the event of DCE requesting Ad Hoc services, DCE shall specify in reasonable detail the nature, business reason and scope of the request and DM Services Provider will use commercially reasonable efforts to deliver Ad Hoc items to DCE in a timely manner, subject to further written agreement of the Parties. Any Ad Hoc Request may be subject to the fee schedule set forth in Exhibit B, Section 4.
- b. **"Business Day"** means any day except a Saturday, Sunday, or any other day on which the commercial banks in the State of California are authorized or required by law or other governmental action to close.
- c. **"CCA Energy Program"** means the individual rate plan option available to a DCE customer that provides varying power content mixes, typically from 35% renewable energy content in a base option to 100% renewable energy content in a premium option.
- d. **"CCA Service"** means DCE's Community Choice Aggregation Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Aggregation (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.
- e. **"CCA Service Request (CCASR)"** means requests in a form approved by SCE to change a CCA Service customer's, utility customer's or direct access customer's choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.
- f. **"Custom Rate Change"** means a completely new rate or modification to an existing rate that alters one or more Billing Determinants within a Rate Schedule buildout by changing the definition of the Billing Determinant itself and/or adding and/or removing one or more Billing Determinants to an existing buildout not tied to a change initiated by the IOU.
- g. **"Default Usage"** means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.
- h. **"Mass Enrollment"** means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.
- i. **"Meter Data Management Agent (MDMA) Services"** means reading SCE's customers' meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SCE standards.
- j. **"Rate Template"** refers to a predefined format used to communicate Rate Schedule(s) from CCA to DM Services Provider. A Rate Template is considered valid once DM Services Provider has reviewed the information it contains to ensure it meets the expected formatting requirements and the Rate Schedule(s) it contains align with published CCA rate schedules.

k. **"SCE"** is the local Utility Distribution Company.

l. **"Self Service"** refers to data that DCE or the CCA can obtain and access through the Data Tools, upon its implementation, or to processes or actions which DCE or the CCA can perform without the assistance of DM Services Provider staff. Should DCE or the CCA request data from DM Services Provider that is available via Self Service or request DM Services Provider perform a process or action that DCE or the CCA can perform via Self Service, this shall be considered an Ad Hoc Request and is subject to the fees listed in Section 7.

m. **"Structural Rate Change"** refers to a rate change that alters one or more Billing Determinants within a Rate Schedule buildout by changing the definition of the Billing Determinant itself and/or adding and/or removing one or more Billing Determinants to an existing buildout.

n. **"Utility-consolidated/Bill-ready"** refers to the method of customer billing where the CCA, via the DM Services Provider, sends the appropriate monthly energy generation (kWh) charges to the Utility and the Utility combines those charges with the applicable non-generation (Transmission & Distribution) charges into a single customer invoice and delivers to the customer for payment.

o. **"Value Only Rate Change"** refers to a rate change that alters only the values applied to each of the Billing Determinants in a given Rate Schedule buildout, keeping the existing buildout intact.

[Remainder of page intentionally left blank]

EXHIBIT B

FEES

In consideration of the services provided by DM Services Provider described in Exhibit A and subject to the terms of the Agreement, DCE shall pay DM Services Provider based on the following fee schedule and terms:

1. SERVICE FEES

a. Data Management Service Fees

- i. DCE shall pay DM Services Provider \$1.206 per active meter per active customer account per month, for each meter served by DCE in the month ("**Data Services Management Fee**").
- ii. Beginning in January 2026, the Data Management Services Fee will escalate annually by the Consumer Price Index West Region using January 2025 data as the baseline with an annual ceiling of four percent (4%).

b. Bill Comparison Tool

- i. DCE shall pay DM Services Provider \$25,000 annually to provide a web-based cost comparison tool.

c. Forecasting Services

- i. Consultant may provide or may cause to be provided certain forecasting services for short-term, long-term, and/or renewable generation. Services are subject to further written agreement.

d. Customer Analytics and Program Management Services

- i. Consultant may provide or may cause to be provided certain demand flexibility, customer targeting and/or, measurement and verification tools and services in support of DCE's program and policy objectives. Services are subject to further written agreement.

2. SCRIPT TRANSLATION SERVICES

Charges incurred by DM Services Provider from engaging with vendors to translate scripts or other documents from English into other language(s) will be passed by DM Services Provider to DCE at cost.

3. ADDITIONAL DATA STORAGE FEE

DCE may elect to expand the included active data retention term for customer data contained in the data warehouse to 60 months at a cost of \$0.015 per meter increase to the per meter per month service fee listed above.

4. ADDITIONAL DELIVERABLE PRICING

The Fees defined in Section 1 above include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables or services provided by DM Services Provider to DCE shall be passed through directly to DCE without mark-up. A labor rate of \$200.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work. No work shall begin until an estimate is provided to and is approved by DCE.

Beginning in January 2026, DM Services Provider's labor rate above will escalate annually by the Consumer Price Index West Region, using January 2025 as the baseline with an annual ceiling of four percent (4%).

5. COMMUNITY BENEFITS GRANT PROGRAM

DM Services Provider shall rebate two percent (2%) of annual Data Management Service Fees collected directly to 501c(3) organizations serving the DCE service territory for the purpose of promoting economic development, local project development, grid resiliency, residential tenant interests and other areas that support the mission of DCE.

ITEM 7B

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: **Revolving Line of Credit Renewal with River City Bank**

Contact: Claude T. Kilgore, Director of Finance (ckilgore@cvaq.org)

Recommendation: Adopt Resolution 2025-02, approving the Fourth Amendment to Credit Agreement with River City Bank for an increased total not to exceed \$20,000,000 and authorizing the Executive Director and/or Legal Counsel to negotiate and take the necessary steps to finalize and execute the credit agreement amendment and related documents

Background: On February 11, 2022, DCE entered into a Credit Agreement with River City Bank (RCB) to establish a Commercial Revolving Line of Credit and an optional subsequent term loan facility through February 2028 totaling up to \$8 million. The City of Palm Springs (City) agreed to guaranty the obligations of DCE under the Credit Agreement pursuant to a Guaranty on behalf of RCB. In June 2022, DCE, at the Board's direction, executed the First Amendment of Credit Agreement and related documents which increased the maximum commitment of RCB from \$8 million to \$13 million. On Jan 30, 2025, DCE executed a Second Amendment to Credit Agreement with RCB to extend the revolving term credit termination date to May 1, 2025. On April 24, 2025, DCE executed a Third Amendment to Credit Agreement to extend the revolving term credit termination date to June 1, 2025. Both administrative amendments extended the termination date for RCB underwriting to review the budget amendment approved by the DCE Board in March 2025 and finalize documents. The potential exposure amount remained unchanged.

Staff is now recommending a Fourth Amendment of Credit Agreement to increase the maximum commitment of RCB from \$13 million to \$20 million. This increase in commitment occurs as DCE's operating costs have risen by nearly one-third since the original Credit Agreement was approved three years ago. It will enable DCE to demonstrate enhanced liquidity to credit rating agencies, provide financial flexibility for increased collateral required on certain long-term power purchase agreements, and address new exposure limits from short-term procurement parties.

The implementation of fiscally prudent policies by the DCE Board like access to committed working capital and liquidity in the form of revolving lines of credit has yielded positive results for DCE. In August 2024, DCE achieved a significant milestone by receiving an investment grade Issuer Credit Rating of BBB from S&P Global Ratings, Inc. Currently, DCE has about \$25 million in cash on hand, representing roughly 140 days of liquidity, and has not drawn on the RLOC since February 2023. These factors highlight DCE's solid financial standing and prudent fiscal management.

Given the significant improvements in DCE's financial position, increased financial flexibility required for collateral commitments, and the need to demonstrate higher liquidity to maintain an investment grade S&P Global Ratings Issuer Credit Rating, DCE staff is recommending the Board renew and expand the revolving line of credit with RCB. The new terms and conditions for the renewal are substantially the same as in the original Credit Agreement from 2022. It includes a renewal term of three

years extending the revolving credit termination date to June 1, 2028 and maintains a subsequent and optional three-year term loan from that date. The commitment amount from RCB will increase by \$7 million, from \$13 million to \$20 million, with no sublimit. No other terms or conditions are suggested to change substantially from the current agreement and guaranty.

DCE staff recommends the Board approve the increased line of credit and authorize the Executive Director to execute the necessary documents to enact it. DCE staff is also coordinating with the City of Palm Springs' staff to increase the guaranty. Given the relatively recent establishment of DCE as an enterprise, with the City of Palm Springs being the sole active jurisdiction in the CCA and possessing excellent credit quality, RCB has requested that the City of Palm Springs maintain its guaranty for the full commitment amount. City staff will be bringing a resolution and related paperwork to the City Council at its May 28 meeting. With Council approval, it will allow the City to complete the necessary documents for its Consent and Reaffirmation of Guaranty and increase the commitment to \$20 million.

Fiscal Analysis: With approval, the revolving line of credit would be increased by \$7 million, from \$13 million to a new total of \$20 million. Total fees due at time of renewal are anticipated at \$60,160 which includes a \$50,000 loan fee, a \$10,000 documentation fee and a \$160 UCC fee. The interest calculation on the line of credit remains the same as from the original credit agreement and is floating at the three-month US Treasury ("UST") bill yield plus 1.75 percent. According to the Wall Street Journal, the three-month UST bill yield was about 4.3 percent at close of trading hours on April 30, 2025, indicating an all-in rate of about 6.05 percent.

Any letters of credit such issued reduce the Credit Agreement commitment availability. There is no interest accrual on the letter of credit commitment as long as the letter of credit remains undrawn; however, under the terms of the Credit Agreement, RCB charges various fees for issuance of a letter of credit that depend on the face amount of the letter of credit and the applicable expiration period as well as other reasonable fees like a documentation fee. RCB's current fee schedule indicates the cost would be 2.50% of the face amount per annum, plus a flat \$250 doc fee upon issuance and each renewal.

Attachments:

1. Resolution 2025-02
2. Fourth Amendment to Credit Agreement with River City Bank
3. Second Amended and Restated Revolving Credit Promissory Note

RESOLUTION NUMBER 2025-02

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF DESERT COMMUNITY ENERGY
APPROVING AN AMENDED CREDIT FACILITY AND
AUTHORIZING THE EXECUTIVE DIRECTOR TO APPROVE RELATED AGREEMENTS**

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; and

WHEREAS, Desert Community Energy (“DCE”) entered into a Credit Agreement with River City Bank (“RCB”) to provide a Commercial Revolving Line of Credit for working capital in the amount of up to \$8,000,000 on February 11, 2022; and

WHEREAS, DCE, on July 8, 2022, amended the February 11, 2022 Credit Agreement with RCB to increase the amount available under the Credit Agreement to \$13,000,000 to allow for such posting pursuant to that certain draft First Amendment to Credit Agreement, Amended and Restated Revolving Credit Note and Letter of Credit Note with RCB (collectively, the “First Revised Loan Documents”) which continued to be secured by an unconditional guaranty of all obligations of DCE as borrower from the City of Palm Springs; and

WHEREAS, DCE entered into a Second Amendment to Credit Agreement with RCB on January 30, 2025 to extend the revolving term credit termination date to May 1, 2025; and

WHEREAS, DCE entered into a Third Amendment to Credit Agreement with RCB on April 24, 2025 to extend the revolving term credit termination date to June 1, 2025; and

WHEREAS, DCE wishes to demonstrate enhanced liquidity to credit rating agencies, provide financial flexibility for increased collateral required on certain long-term power purchase agreements, and address new exposure limits from short-term procurement parties has negotiated an increase in the amount available under the Third Amendment to Credit Agreement to \$20,000,000 pursuant to that certain draft Fourth Amendment to Credit Agreement, Second Amended and Restated Revolving Credit Note and Letter of Credit Note with RCB (collectively, the “Second Revised Loan Documents”); and

WHEREAS, the increased line of credit under the Credit Agreement, as modified by the Second Revised Loan Documents, will continue to be secured by an unconditional guaranty of all obligations of DCE as borrower from the City of Palm Springs; and

WHEREAS, the DCE Board of Directors desires to delegate authority to the Executive Director and General Counsel to finalize and execute Second Revised Loan Documents with RCB in satisfaction of DCE’s additional credit requirements, consistent with the terms and conditions set forth in the Credit Agreement, as amended by the Second Revised Loan Documents, and pending approval of a Consent and Reaffirmation of Guaranty from the City of Palm Springs;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of DCE as follows:

1. The Board of Directors has reviewed the Second Revised Loan Documents and the recommendations of DCE staff and legal counsel and has determined that the recitals herein are true and correct.

2. The expanded line of credit of \$20,000,000, as documented in the Second Revised Loan Documents, is hereby approved, together with such changes and additions as the Executive Officer and General Counsel may deem necessary, appropriate or advisable, for the performance of DCE's obligations thereunder and the consummation of the transactions contemplated thereby be, and are hereby, approved.
3. The Board of Directors hereby authorizes the Executive Director, or his designee, with the advice of legal counsel, to finalize and execute the Second Revised Loan Documents, as well as any documents ancillary thereto.
4. This Resolution shall be effective immediately upon approval by the Board of Directors.

PASSED AND ADOPTED by the Board of Directors of Desert Community Energy on this 19th day of May, 2025.

AYES:
NOES:
ABSTAIN:
ABSENT:

Jeffrey Bernstein
Chair, Desert Community Energy

Attest:

Tom Kirk
Secretary, Desert Community Energy

Approved as to form:

Glen Price
DCE Legal Counsel

FOURTH AMENDMENT TO CREDIT AGREEMENT

This Fourth Amendment to Credit Agreement (this “*Amendment*”) is entered into as of May __, 2025, by and between **DESERT COMMUNITY ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

1. Background and Purpose.

1.1 Lender and Borrower have entered into a revolving credit facility as set forth in that certain Credit Agreement (as amended, the “*Credit Agreement*”) dated as of February 11, 2022. Capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement.

1.2 Borrower has requested certain modifications of the Credit Agreement. Lender is willing to grant Borrower’s request, on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual benefits of the parties hereto and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

2. Amendment of Credit Agreement. The Credit Agreement is hereby amended as follows:

2.1 Revolving Credit Termination Date. The “*Revolving Credit Termination Date*” is hereby extended to **June 1, 2028**.

2.2 Revolving Credit Commitment. The Revolving Credit Commitment is hereby increased from \$13,000,000.00 to **\$20,000,000.00**.

2.3 Working Capital Advances. The sublimit on Working Capital Advances set forth in Section 2.1 of the First Amendment to Credit Agreement dated July 8, 2022, is hereby deleted. Borrower shall be entitled to request Working Capital Advances in the aggregate amount outstanding at any one time not exceeding the Revolving Credit Commitment.

2.4 Term Loan. Borrower shall no longer be entitled to convert outstanding Advances to a Term Loan. Section 6 of the Credit Agreement and all other references to the Term Loan in the Credit Agreement are hereby deleted.

2.5 Promissory Note. The term “*Promissory Note*” as used in the Credit Agreement is hereby amended to mean that certain Second Amended and Restated Revolving Credit Promissory Note dated as of the date of this Amendment, made by Borrower and payable to the order of Lender in the original principal amount of \$20,000,000.00.

3. Conditions Precedent. The effectiveness of this Amendment is expressly conditioned upon the satisfaction of all of the following conditions:

3.1 Documents. Borrower shall have executed (if applicable) and Lender shall have received all of the following documents:

- (a) this Amendment and the Second Amended and Restated Revolving Credit Promissory Note, in the form provided herewith;
- (b) the Consent and Reaffirmation of Guaranty in the form provided herewith, duly executed by Guarantor;
- (c) a favorable written legal opinion from Borrower's counsel as to power and authority of Borrower to enter into this Amendment and perform its Obligations under the Credit Agreement, as amended; the power and authority of Guarantor to enter into Consent and Reaffirmation of Guaranty and perform its Obligations under the Guaranty, as amended; and the due execution, validity and enforceability of this Amendment and the Consent and Reaffirmation of Guaranty; and
- (d) such other documents, instruments and agreements as Lender may reasonably request.

3.2 Fees and Costs. Lender shall have received, in immediately available funds, payment of all fees and costs listed on the Invoice provided herewith.

3.3 Representations and Warranties. All representations and warranties contained herein shall be true and correct in all material respects, and no Default or Event of Default shall have occurred and be continuing.

4. Representations and Warranties. By signing this Amendment, Borrower hereby represents and warrants that (a) all representations and warranties in the Credit Agreement are true and correct in all material respects as of the date hereof, (b) Borrower is duly authorized to enter into this Amendment, and (c) no Default or Event of Default has occurred or is continuing under the Credit Agreement.

5. Continuing Validity. Except as expressly modified by this Amendment, the terms of the original Credit Agreement remain unchanged and in full force and effect. Consent by Lender to this Amendment does not waive Lender's right to strict performance of the Credit Agreement as modified, nor obligate Lender to make any future amendments.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the first date written above.

BORROWER:

DESERT COMMUNITY ENERGY

By: _____
Thomas Kirk
Executive Director

LENDER:

RIVER CITY BANK

By: _____
Name: _____
Its: _____

SECOND AMENDED AND RESTATED REVOLVING CREDIT PROMISSORY NOTE

\$20,000,000.00

May __, 2025

FOR VALUE RECEIVED, **DESERT COMMUNITY ENERGY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of up to TWENTY MILLION and No/100 DOLLARS (\$20,000,000.00), pursuant to the terms of that certain Credit Agreement (as amended, the "*Credit Agreement*") dated as of February 11, 2022, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Second Amended and Restated Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on June 1, 2025, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

DESERT COMMUNITY ENERGY

By: _____

Name: _____

Its: _____

ITEM 7C

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: DCE Fiscal Year 2025-26 Budget Preview

Contact: Claude T. Kilgore, Director of Finance (ckilgore@cvag.org)

Recommendation: Information

Background: Each spring, DCE staff typically provides an update on budget preparation progress in anticipation of the budget that will go before the Board for review and approval by the end of June. DCE staff are currently finalizing DCE's Fiscal Year 2025-26 Budget, covering the period from July 1, 2025 through June 30, 2026. This budget will pertain to DCE's sixth full fiscal year of operations for its electricity customers in the City of Palm Springs. At the May 2025 meeting of the DCE Board, staff will provide a high-level overview of the budget as described below.

As with any budget, particularly one related to wholesale power purchasing and the resale of electricity, many uncertainties will exist. DCE staff will use the "most likely" case for forecast information and acknowledge that actuals may vary from budget forecasts. DCE staff will continually evaluate the budget during the upcoming fiscal year and present the 2025-26 budget-to-actuals for review on a quarterly basis.

Some key factors DCE staff will be considering when finalizing the budget forecasts include evaluation of current energy costs and forwards curves, load forecasts, analysis of the western United States' hydrology and weather conditions as well as national and global geo-political events. Staff also considers relevant factors related to weather patterns include heat storms, wildfires and other climate impacts which affect load variability as well as power market price volatility. DCE staff continues to monitor power purchase agreements and their performance as well as aging of accounts receivable on revenue generated.

In addition to these factors, all Community Choice Aggregation programs (CCAs) must adhere to complex regulations from the California Public Utilities Commission (CPUC). These CPUC regulations have become more expensive in recent years, especially concerning procurement and compliance with Resource Adequacy (RA) and Renewable Portfolio Standards (RPS). Additional costs have increased due to new regulations like Slice of Day RA that influence power procurement markets, affecting DCE's negotiating leverage. DCE also faces significant CPUC penalties if it does not comply promptly with its requirements, and there has been limited flexibility from the CPUC on these matters.

Also influencing DCE's budget is its relationship with Southern California Edison (SCE), which provides transmission and delivery to DCE's customers and handles the billing. SCE also represents DCE's sole competition in the market space therefore DCE must remain cognizant of opt-out risk when determining energy rate recovery. As a result, SCE's projected retail rates

and the Power Charge Indifference Adjustment (PCIA, or exit fee) are both integral components of DCE's budgetary considerations.

The proposed budget, which will be presented in June, serves as a blueprint for the year ahead. Staff will continue collaborating with its procurement and financial modeling consultant, The Energy Authority (TEA), to update power supply costs, retail revenue projections, climate impacts and load forecasts, regulatory mandates such as RA and renewable energy procurement, and other factors throughout the year.

DCE's major budget assumptions for Fiscal Year 2025-26 will include the following:

1. Full accrual accounting practices are implemented in line with US Generally Accepted Accounting Principles (GAAP) for enterprise funds.
2. Palm Springs is the only city where DCE is actively serving CCA customers.
3. Projected loads, resources, and costs will utilize TEA's May 21, 2025 financial model inclusive of information filed by SCE in its application to the CPUC for its 2026 Energy Resource Recovery Account (ERRA).
4. DCE will develop its budget to ensure that net margin after expenses exceed 2.0x Fixed Charge Coverage ratios.
5. DCE will see an opt-down rate of about 16 percent, meaning those DCE customers are choosing Desert Saver as opposed to the 100% Carbon Free default product.
6. Board approved rate-setting objectives are met as outlined in DCE's Amended Rate Stabilization Schedule, which became effective April 1, 2025.
 - a. DCE's Carbon Free product rate/revenue requirements from a rate premium on SCE's bundled base product and provides that DCE's Carbon Free rates are to be based on DCE's Carbon Free full revenue requirements including Board approved financial reserves accumulation, meeting fixed charge ratios, and responding to power market and regulatory changes.
 - b. The residential Desert Saver customer bill, on average, is to be about 0-1.0% less than SCE's bundled base for customers enrolled in DCE's largest residential rate class, "Domestic" and meets full California Renewables Portfolio Standard compliance.
7. DCE will provide specific funding for new customer programs in its service territory. This includes a matching contribution supporting the City of Palm Springs' reach code ordinances, if adopted by City Council. These would include incentives for homeowners who carry out qualifying energy efficiency upgrades, which would help the City of Palm Springs further reduce its greenhouse gas emissions.
8. Non-energy costs will be estimated with inflationary increases on a budget-line level to reflect budgetary conservatism.
9. Cost allocation and rate setting is based on cost recovery, fairness and equity.
10. DCE meets regulatory, legislative and operating requirements.
11. DCE continues ongoing collaboration with CalCCA, other CCAs and public power groups.
12. DCE maintains necessary and adequate internal staffing and continues the contract support relationship with the Coachella Valley Association of Governments (CVAG).
13. DCE will monitor and adjust forecast retail loads, revenues and costs based on actual experience and revise expectations accordingly throughout the forthcoming year.
14. DCE follows adopted Board policies and objectives.

While the May meeting of the Board provides a high-level overview as described above, the June Board meeting will provide an opportunity for a detailed presentation of the budget as well as a forum to address any questions and comments, and for the Board to consider budget approval as prescribed by the DCE Joint Powers Agreement. In the meantime, DCE staff is providing current year budget-to-actuals as part of this month's agenda packet.

Fiscal Analysis: This is an information item with costs for preparing the upcoming budget covered under existing staff time.

ITEM 8A

**DESERT COMMUNITY ENERGY BOARD
FY2024-2025 ATTENDANCE RECORD**

Voting Members	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE
City of Palm Desert	*	*	*	✓	*	✓	*	*	✓	*		
City of Palm Springs	*	*	*	✓	*	✓	*	*	✓	*		

Absent

No Meeting

*

ITEM 8B

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: 2024 Annual Supplier Diversity Report

Contact: Savannah Gil, Program Specialist (sgil@cvaq.org)

Recommendation: Information

Background: Community Choice Aggregators (CCAs) like DCE are required to submit an Annual Supplier Diversity Report to the California Public Utilities Commission (CPUC) that details a plan for increasing procurement from small, local, and diverse business enterprises and details procurement efforts related to Women, Minority, Disabled Veteran, or Lesbian Gay Bisexual Transgender Business Enterprises (WMDVLGBTBEs). The CPUC oversees the voluntary Supplier Diversity Program under General Order 156 (GO 156), which promotes efforts to increase the number of utility contract dollars spent on underserved or marginalized groups.

DCE submitted its 2024 Annual Supplier Diversity Report to the CPUC on February 28, 2025. The report highlights DCE's commitment to promoting equal access to economic opportunities for WMDVLGBTBEs and increasing procurement from certified, local, small, and diverse businesses, as well as outlines DCE's goals for 2025. Although DCE primarily purchases power contracts, DCE staff is committed to finding ways to source other goods and services, including subcontracting, to promote inclusivity. To support the local community, DCE aims to prioritize local procurement, benefiting both the residents and local businesses.

The CPUC's Supplier Diversity Program is a valuable initiative that includes a Supplier Clearinghouse that maintains a Certified Suppliers List. This list provides utilities and covered entities, such as CCAs, with access to a centralized database of certified suppliers, aiding them in meeting their procurement goals. By participating in this program, local companies can be identified as eligible, certified suppliers, opening multiple opportunities for networking and visibility through marketing activities, events, and bid announcements advertised by the Clearinghouse.

The CPUC develops and distributes the annual Supplier Diversity Report template to CCAs and utility companies. Some of the report sections and tables do not apply to DCE specifically and thus are either identified as not applicable or intentionally left blank. An example of this can be seen in the table found in Section 9.1.2 of the report. Other tables, such as those found in Section 9.1.9, are automatically populated with zeros, as DCE is only responsible for filling in any applicable data.

The 2024 Report identifies that DCE currently has a contract with one local, diverse business enterprise that is certified through the CPUC Supplier Clearinghouse as an LGBT business enterprise. Moreover, the 2024 Report highlights DCE's endeavors to recruit individuals from diverse backgrounds to join its Community Advisory Committee, particularly those who represent underserved areas of the community. However, DCE staff acknowledges that more needs to be done to support small, local, and diverse businesses in the area. DCE staff is exploring ways to help eligible, local businesses get certified and listed on the State's Supplier Clearinghouse database. Additionally, Supplier Diversity Certification information was distributed on April 16, 2025, by DCE's

sister agency, the Coachella Valley Association of Governments (CVAG), during the Coachella Valley Local Government Vendor Fair.

The 2024 Annual Report also features DCE's planned activities for 2025 to expand supplier diversity and support local and small businesses, which include:

- Creating more opportunities to contract with diverse suppliers by establishing a procurement schedule based on expiring contracts
- Helping local, diverse suppliers get certified by partnering with Marin Community Energy to promote the annual CCA Supplier Diversity Workshop, allowing local businesses to learn more about the certification process.
- Enhancing training and knowledge efforts on Supplier Diversity with current and new DCE staff members by creating dedicated training materials, including presentations and fact sheets.
- Utilizing a new Enterprise Resource Planning (ERP) system to track DCE's financials and to help streamline future reporting needs.

DCE staff will continue to work toward achieving its supplier diversity goals planned for 2025 and will provide updates to the Board accordingly.

Fiscal Analysis: There is no additional cost to DCE for this information item. The cost of performing supplier diversity activities is covered in the DCE budget.

Attachment: 2024 GO 156 Supplier Diversity Report



DESERT
COMMUNITY
ENERGY

SUPPLIER DIVERSITY ANNUAL REPORT 2024

TO THE CALIFORNIA PUBLIC
UTILITIES COMMISSION
MARCH 1, 2025

Desert Community Energy

74-199 El Paseo, Suite 100

Palm Desert, CA 92260

(760)346-1127

Email:

info@desertcommunityenergy.org

Website:

www.desertcommunityenergy.org

2024-2024 DCE HIGHLIGHTS

39,955 customers served in 2024

94,579 MWh of local wind energy generated annually

70,105 metric tons of greenhouse gas emissions reduced in 2023

28,428 customers receiving 100% carbon-free energy in 2024

25 megawatts of battery storage in development

100+ clean energy jobs created from DCE projects (including construction and permanent)

TABLE OF CONTENTS

Introduction.....	1
9.1.1 Supplier Diversity Program Activities	2
Hiring Practices.....	2
Community Advisory Committee	2
Strategic Initiatives.....	3
Workforce and Board Diversity	4
9.1.2 Summary of Purchases	5
Supplier Diversity Results of Goods and Services (non-power purchases)	5
Description of Suppliers with Majority Workforce in California	7
9.1.3 Diverse Supplier Program Expenses.....	8
9.1.5 Summary of Prime Contractors Utilization of Diverse Supplier Subcontractors.....	9
9.1.6 List of Diversity Complaints Received.....	9
9.1.9 Supplier Diversity Activities and Progress in Power (Energy) Procurement	9
10.2 Supplier Diversity Program Activities Planned for 2025....	11
Planned External Program Activities	11
Planned Internal Program Activities	11
Plans to Encourage Prime Contractors to Subcontract Small, Local, and Diverse Businesses	11

PAGE LEFT INTENTIONALLY BLANK

Introduction

Desert Community Energy (DCE) is a local government, not-for-profit Joint Powers Authority established in 2017 to provide member agencies with a Community Choice Aggregation (CCA) program. The cities of Palm Springs and Palm Desert are current members. DCE began serving load to the City of Palm Springs in April 2020, serving approximately 33,000 residential, commercial, industrial, and agricultural accounts as of December 2024.

DCE's goals are to 1) reduce greenhouse gas emissions relating to electricity use; 2) provide electric generation at competitive, stable rates; 3) offer programs to reduce energy consumption; 4) stimulate the local economy by developing local jobs in renewable energy; and 5) promote long-term energy security, and reliability for customers through local control of electric generation resources.

The California Public Utilities Commission (CPUC) General Order 156 (GO 156) emphasizes preferential purchasing for diverse business enterprises. In compliance with Proposition 209, CCAs as local government entities do not explicitly give preferential treatment to bidders based on race, sex, color, ethnicity, or national origin. Proposition 209 limits CCAs as public agencies from engaging in several of the activities associated with supplier diversity under GO 156. However, DCE acknowledges that more needs to be done to support small, local, and diverse businesses in our region.

Consistent with the requirements of Senate Bill 255, this report describes DCE's continued efforts to plan for and implement practices to increase procurement from small, local, and diverse businesses. It also reports to the Commission on its procurement from these sources.

DCE continues to improve our understanding of the evolving GO 156 requirements and opportunities to increase diversity in our procurement. DCE is committed to expanding equal access to economic opportunities for minority business enterprises (MBE), women-business enterprises (WBE), LGBT business enterprises (LGBTBE), persons with disability business enterprises (PDBE), and disabled veteran business enterprises (DVBE). DCE is also committed to involving local and small businesses in our procurement efforts. Most of DCE's expenditures are focused on power contracts.

The Coachella Valley, being a small region, presents challenges for local and small businesses to act as prime contractors in grid-scale energy projects, as obtaining project capital necessitates proof of financial stability. However, there could be chances for these businesses to engage as subcontractors or consultants on such projects. One of DCE's goals is to ensure profits are retained within our communities, supporting local businesses and residents.

9.1.1 Supplier Diversity Program Activities

In 2024, DCE engaged in the following activities oriented toward increasing supplier diversity:

- Reviewed information provided by CPUC staff regarding updated compliance with GO 156.
- Conducted outreach to diverse businesses at six community events and provided information on supplier diversity and the Supplier Clearinghouse.
- Reached out to the Desert Business Association to share about the Supplier Diversity Program.
- Continued familiarizing staff with the history, requirements, and intent of Senate Bill 255 and General Order 156. This included educating consultants on GO 156 and providing updated supplier diversity informational flyers for outreach events.
- Created a user profile for the former Supplier Clearinghouse website, and posted one RFP that received over 15 proposals.
- Continued working with other CCAs as members of CalCCA to learn best practices in maximizing supplier diversity in our communities, given the constraints of Proposition 209.

In 2025, DCE will continue to dedicate resources to working with our existing and future suppliers on

opportunities to expand institutional diversity and inclusion. The Coachella Valley is a diverse region with many business owners who fall within the GO 156 parameters but may not know about the Clearinghouse or realize their eligibility for certification.

DCE continues to do outreach via social media, its website, and attendance at various community events where information is shared and opportunities to get certified are offered. We will also encourage our current and future contractors to share information on diverse business certifications with their subcontractors.

Hiring Practices

DCE staffing is provided by the Coachella Valley Association of Governments (CVAG) through a management services agreement approved by the DCE Board. Thus, DCE does not directly employ staff. However, CVAG is an equal opportunity employer, and recruiting and hiring practices are established to strive for diversity, consistent with the requirements of Proposition 209. Recruitment outreach opportunities to access a diverse pool of potential job applicants are utilized.

Community Advisory Committee

In March 2019, the DCE Board established a Community Advisory Committee (CAC) to create a structured opportunity for community members to engage with DCE and to help ensure that efforts to educate and inform member communities about DCE's initiatives and programs are broad and inclusive. The CAC remained

active until 2022, after which its activities stalled because of membership challenges. As a result, DCE looked for ways to reconnect with its members and compile a list of candidates.

Following an adequate number of applications from the community, DCE convened its first CAC meeting for the 2024-2026 membership term on December 9, 2024, featuring eight appointed members. Currently, the CAC has seven active members as of January 2025. The CAC convened again on January 27, 2025, to outline topics for future meetings. DCE plans to involve the CAC in customer program planning.

Strategic Initiatives

Since its launch in April 2020, DCE has released multiple requests for offers (RFOs) and requests for proposals (RFPs), resulting in various agreements such as renewable energy agreements, energy storage agreements (ESAs), and power purchase agreements (PPAs) for procuring power and electric capacity. DCE's long-term energy agreements with local providers include companies like Terra-Gen and NextEra.

On December 21, 2020, the DCE Board approved three 15-year PPAs with Terra-Gen, LLC (Terra-Gen). Terra-Gen is a leading developer, owner, and operator of renewable energy projects that has been operating since 2008. The 10.8-megawatt (MW) Coachella Hills II project achieved its Commercial Operation Date (COD) and entered DCE's portfolio on May 31, 2021. The existing 9.8 MW Altwind and

12.6 MW East Wind projects entered DCE's portfolio on January 1, 2023. On December 9, 2024, the DCE Board amended one of the existing PPAs to include the existing 11.2 MW Phoenix project, which entered DCE's portfolio on February 1, 2025.

On September 27, 2024, DCE executed an ESA with Desert Sands Energy Storage II, LLC, a subsidiary of NextEra Energy Resources (NextEra). The project is a 25 MW / 200 MWh lithium-ion battery storage facility that is part of a larger 700 MW energy complex located mainly within the Palm Springs City limits. The expected COD for DCE's portion of the project is April 1, 2027.

As part of its forecasting and procurement processes, DCE considers the overall diversity and reliability of its renewable portfolio. DCE also reviews the respective risks associated with short and long-term purchases as part of its forecasting and procurement processes. These efforts will lead to a more diverse resource mix, address grid integration issues, and provide value to the local community.

Beyond the state's minimum renewable procurement requirements, the DCE Board has established additional green and renewable energy goals. Specifically, the DCE Board has directed that DCE acquire a portfolio consisting of 100 percent carbon-free generation for its Carbon Free product. All current customers served by DCE in the City of Palm Springs were automatically enrolled into this Carbon Free product as the default. The vast majority of DCE's customers have chosen to remain with this

premium product rather than opting down to the Desert Saver product, which provides cost-savings while still meeting Renewables Portfolio Standard (RPS) compliance requirements.

DCE also continues efforts to include small, local, and diverse businesses in non-energy procurement opportunities. To this end, DCE's Board adopted a procurement policy at its meeting on July 18, 2022. This policy includes a section on supplier diversity, in line with the CPUC's Supplier Diversity Program. Since promoting local job creation is one of the core benefits of DCE, the procurement policy also includes a local preference based substantially on the Local Business Preference Program in both Palm Desert and Palm Springs.

Workforce and Board Diversity

In August 2024, DCE submitted its annual RPS Workforce Development data report to the CPUC, highlighting the diversity of its staff. The report indicated that DCE has four full-time employees, three of whom are women, and one is a minority.

The DCE Board is made of two members, one from the City of Palm Springs and the City of Palm Desert. Both Board members were women in 2024. In 2025, the diversity of the Board has changed. Public information on DCE's Board members can be found at desertcommunityenergy.org.

Image below: Elected officials and DCE's Executive Director, Tom Kirk, (bottom right) at the 2021 Terra-Gen Signing Ceremony for the newly acquired wind projects.



9.1.2 Summary of Purchases

DCE commits to purchasing from small, local, diverse businesses within our region to the extent possible. This section summarizes the 2024 results of DCE's procurement in the requested categories. It should be noted that the majority of DCE's procurement is through wholesale power contracts. As a result, opportunities to directly engage with local and small businesses are more limited. Many of the electric generation resources are developed, owned, and operated by large corporations with sufficient capital to manage these projects. Still, DCE has been successful in procuring wind energy from projects within the local community (please see section 9.1.1) from local developers.

Despite the difficulties in finding diverse procurement opportunities for power purchases, DCE engaged with at least one registered diverse supplier for its services and products. Its current marketing and outreach provider is a Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE) that has been working with DCE since 2023.

Moving into 2025 and beyond, DCE will work to further enhance local procurement and supplier diversity, aiming to raise the proportion of diverse spending. DCE plans on doing this by reviewing its current contracts and creating a procurement schedule for the products and services that are due for a new request-for-proposals cycle.

Supplier Diversity Results of Goods and Services (non-power purchases) if Procured

The table for 9.1.2 is on the next page.

Photo below: An example of DCE swag materials at outreach events.



		2024							
		Direct Spend ¹ \$	Sub Spend ² \$	Total \$	%	Product Spend \$	Service Spend \$	Total \$	%
Minority Male	African American								
	Asian Pacific American								
	Hispanic American								
	Native American								
	Total Minority Male								
Minority Female	African American								
	Asian Pacific American								
	Hispanic American								
	Native American								
	Total Minority Female								
Total Minority Business Enterprise (MBE)									
Women Business Enterprise (WBE)									
Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE)		\$23,025		\$23,025	0.86%	7,927	15,098	\$23,025	0.86%
Disabled Veteran Business Enterprise (DVBE)									
Persons with Disabilities Business Enterprise (DWBE)									
8(a)*									
Total Supplier Diversity Spend		\$23,025		\$23,025	0.86%	7,927	15,098	\$23,025	0.86%
Net Procurement**		\$2,692,357							
Net Product Procurement		\$34,217							
Net Service Procurement		\$2,658,140							
Total Number of Diverse Suppliers that Received Direct Spend		1							

NOTE:

* 8(a) - Businesses owned and controlled by persons found to be disadvantaged by the U.S. Small Business

Administration pursuant to Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)) or the U.S. Secretary of Commerce, pursuant to Section 5 of Executive Order 11625 (GO 156 Section 1.3.13).

** Net Procurement includes purchase orders, non-purchase orders, and credit card dollars.

¹ Direct - Means Direct Procurement: when a CCA directly procures from a supplier.

² Sub - Means Subcontractor Procurement: when a prime contractor, in contract with a CCA, procures from a subcontractor to fulfil its contractual obligation(s).

% - Percentage of Net Procurement.

Description of Suppliers with Majority Workforce in California

As noted above, the majority of DCE's purchases are power contracts. One of the goals of DCE is to keep profits in our local communities to benefit businesses and residents, including those who have endured economic marginalization.

Currently, DCE receives non-power services and products from fourteen vendors. DCE sent out a survey to its vendors to inquire about their workforce diversity and location distribution. Of the fourteen vendors, only three responded. From the vendors that responded, the average percentage of the workforce in California is 94.6%.

At Burke Rix Communications, the workforce consists of 66.66% male and 33.33% female employees. One-third of the workforce identifies as a minority (non-white) race or ethnicity. At Best, Best, & Krieger, the workforce is 59.94% female, 41.84% male, and 0.44% non-binary. Among them, 58.94% identify as white, while 37.30% identify as a minority (non-white) race or ethnicity, and 3.76% identify as belonging to two or more races/ethnicities. Donald B. Dame Consulting is operated by a single individual who identifies as a white male.

Please see the following table summarizing their responses:

Supplier	Average Workforce in CA
ACE Printing Mailing	No Response
Arthur J. Gallagher Risk Management Services	No Response
Best, Best, & Krieger	0.84
Burke Rix Communications	1.00
CalCCA	No Response
Calpine Energy Solutions	No Response
Davis Farr	No Response
Donald B. Dame Consulting	1.00
MRW Associates	No Response
PFM Financial Advisors	No Response
Standard & Poor's Financial Services	No Response
The Energy Authority	No Response
White Rabbit Group	No Response
WREGIS	No Response

9.1.3 Diverse Supplier Program Expenses

DCE has spent \$26,151 to implement a supplier diversity program in accordance with GO 156. The chart below includes expenses related to marketing and outreach for events, salaries for staff engaged in supplier diversity programs, as well as costs associated with training personnel on supplier diversity initiatives and reporting.

In 2024, there were no designated trainings for GO 156, leaving nothing to report. However, in 2025, DCE intends to partner with MCE for their annual workshop to encourage participation from local businesses in the Coachella Valley.

In accordance with the California Public Utilities Code and the policy objectives of the California Public Utilities Commission (CPUC) as outlined in CPUC General Order 156, DCE encourages businesses to become certified by the CPUC as diverse business enterprises in all of its RFPs.

Expense Category	2024
Wages	\$0
Other Employee Expenses	\$0
Program Expenses	\$11,052
Reporting Expenses	\$0
Training Expenses	\$0
Consultant Expenses	\$15,098
Other Expenses	\$0
Total	\$26,151

9.1.5 Summary of Prime Contractors Utilization of Diverse Supplier Subcontractors

In 2024, DCE worked with primary contractors to fully utilize diverse suppliers when possible. Efforts included encouraging contractors to subcontract with diverse suppliers in product procurement. No prime contractors utilized diverse supplier subcontractors in 2024.

In 2025 and beyond, DCE will work with primary contractors to identify ways to enhance supplier diversity, including subcontracting, and encourage them to have all tiers of subcontractors that are eligible to participate in the certification process.

9.1.6 List of Diversity Complaints Received

DCE is happy to report it did not receive any formal complaints this reporting cycle.

9.1.9 Supplier Diversity Activities and Progress in Power (Energy) Procurement

As previously mentioned, DCE has issued RFOs and RFPs, which have resulted in various agreements, including renewable energy agreements, ESAs, and PPAs, to purchase power and electric capacity over four years. The Mid-term Reliability Energy Resources RFP published in July 2024 led to the PPA with Terra-Gen referenced in section 9.1.1. The Phoenix project exemplifies how DCE can fulfill its goal of reinvesting revenues locally to support the community by creating jobs and encouraging the development of additional local renewable energy sources.

In summary, during the reporting year 2024, DCE did not procure energy storage systems, vegetation management, or renewable and non-renewable energy from a CPUC Supplier Diversity Program-certified entity, nor did DCE own any power plants or PPAs that would necessitate procuring fuel for generation in 2024.

The table for 9.1.9 is on the next page.

		Direct Power Purchases \$	Direct Fuels for Generation \$			Totals \$ ¹			% ²
		Renewable and Non-Renewable Power Products	Diesel	Nuclear	Natural Gas	Direct ³	Sub ⁴	Total \$ ⁵	
Minority Male	African American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Asian Pacific American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Hispanic American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Native American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Total Minority Male	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Minority Female	African American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Asian Pacific American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Hispanic American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Native American	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Total Minority Female	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Minority Business Enterprise (MBE)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Women Business Enterprise (WBE)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Lesbian, Gay, Bisexual, Transgender Business Enterprise (LGBTBE)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Disabled Veteran Business Enterprise (DVBE)		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Persons with Disabilities Business Enterprises (DBE)		\$0	\$0	\$0	\$0	0	0	0	
8(a) ⁶		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Supplier Diversity		\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Net Power Procurement		\$59,537,310							
Net Direct Power Purchases		\$59,537,310							
Net Direct Fuels for Generation		\$0							
Total Number of Diverse Suppliers		0							

NOTES:

¹ Excludes purchases from the California Independent System Operator (CAISO), utilities, federal entities, state entities, municipalities and cooperatives.

² % - Percentage of Net Procurement.

³ Includes Direct Power Purchases and Direct Fuels for Generation. Direct - Means Direct Procurement: when a CCA directly procures from a supplier.

⁴ Sub - Means Subcontractor Procurement: when a prime contractor, in contract with a CCA, procures from a subcontractor to fulfil its contractual obligation(s).

⁵ "Total" does not include pre-commercial development (COD) subcontracting values.

⁶ 8(a) - Businesses owned and controlled by persons found to be disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)) or the U.S. Secretary of Commerce, pursuant to Section 5 of Executive Order 11625 (EO 156 Section 1.3.13).

10.2 Supplier Diversity Program Activities Planned for 2025

Planned External Program Activities

1. Create more opportunities to contract with diverse suppliers

DCE plans to conduct a thorough review of its current vendors to determine which contracts, if applicable, are due for a new RFP or RFQ for procurement. DCE will establish a Procurement Schedule to plan opportunities accordingly for posting on the new Supplier Clearinghouse website. DCE's primary goal for 2025 is to increase its Supplier Diversity Spend by engaging more diverse suppliers.

2. Help local, diverse suppliers get certified

DCE intends to be more proactive in sharing certification opportunities with local businesses. It plans to collaborate with MCE to help promote the annual Supplier Diversity workshop, allowing local businesses to learn more about certification.

Planned Internal Program Activities

1. Enhance training and knowledge efforts on Supplier Diversity with current and new DCE Staff

DCE is a small agency with limited staff and utilizes consultants for most services. In 2025, we anticipate hiring and training new team members who will become familiar with supplier diversity requirements. DCE will prioritize attending quarterly trainings provided by CPUC to CCAs, and plans to create a high-level overview Supplier Diversity Program training packet for new DCE Staff.

2. Utilize a new financial system to track DCE's spend

DCE intends to implement a new financial software system to monitor vendor invoices, revenue, and payments for fiscal year 2025/2026. This system will be tailored to enhance tracking of Supplier Diversity spending for future reports.

Plans to Encourage Prime Contractors to Subcontract Small, Local, and Diverse Businesses

DCE will work with its current and future contractors to encourage the utilization of small, local, and diverse businesses to engage these BEs in all categories that provide subcontracting opportunities. Part of this outreach will include educating contractors on the importance and benefits of engaging the services of Clearinghouse-registered and eligible entities.

DCE is committed to achieving its supplier diversity goals in 2025. In March 2025, the DCE Board will be asked to

adopt the supplier diversity program goals and activities to be implemented in 2025.

In the short term, DCE aims to train its team to become proficient in supplier diversity requirements and eventually become the go-to resource for local and county business entities. These objectives are reflected in the planned activities for 2025.

In the mid and long term, DCE aspires to expand its outreach to diverse local businesses, particularly those in underserved communities, and increase the number of diverse supplier contracts.

DCE acknowledges that there is still more work to be done in order to align its outreach procedures with its efforts to meet supplier diversity goals. As part of this effort, DCE will prioritize increasing the amount of contract dollars spent on underserved or marginalized groups. We will dedicate time and resources to promote these efforts and ensure we stay on track. DCE intends to work closely with other CCAs and CalCCA to identify program best practices and opportunities for information sharing. DCE appreciates the continued assistance provided by CPUC Staff and looks forward to working together to enhance supplier diversity programs in the coming years.

Photo right: DCE Booth at local ONE-PS Outreach event.



ITEM 8C

Desert Community Energy Board May 19, 2025



STAFF REPORT

Subject: Conflict of Interest Guidance

Contact: Elysia Regalado, Management Analyst (eregalado@cvag.org)

Recommendation: Information

Background: On occasion, elected officials serving on the Coachella Valley Association of Governments (CVAG) and its sister agencies have asked about the rules and regulations surrounding conflicts of interest during voting. By outlining essential guidelines, this staff report aims to serve as a refresher and provide members with the information needed to make informed and ethical decisions.

A full guidance report from Best Best & Krieger is provided as an attachment. Some key highlights:

Real Property Conflicts: Ownership of property within 500 feet of a subject property under consideration constitutes a presumed conflict. Please note that property within more than 500 feet can still create a conflict of interest under certain circumstances. Board members must recuse themselves from discussions and voting on matters affecting property.

Financial Contributions: Campaign contributions of \$500 or more, within 12 months before and after a proceeding, from an individual or entity involved in a matter being deliberated are considered a conflict, subject to certain exceptions. Disclosure of such contributions is mandatory, and Board members must abstain from participating in related votes.

Personal Financial Interests: Board members should recuse themselves if they have any financial interest, including ownership of real property, business investments, personal income, or spousal income.

Dual Roles and Serving on Other Boards: Board members serving in dual roles or on other boards do not need to recuse themselves unless the matter involves real estate negotiations or potential litigation discussed in a closed session. Transparency and documentation of dual roles are encouraged to avoid the appearance of bias.

Disclosure and Recusal Procedures: Board members are required to disclose conflicts of interest to document recusal decisions. Recusal includes leaving the room during deliberations and avoiding any participation in the matter under discussion.

Fiscal Analysis: There is no fiscal impact for this informational update

Attachment: Best Best & Krieger 2024 Key Insights Into Open Government & Ethics- *Avoiding Financial Conflicts- Should I Participate in this Decision?*



Avoiding **Financial Conflicts of Interest** — Should I Participate in this Decision?

The Political Reform Act of 1974 (Gov. Code Sections 81000–91014) forms the foundation for California’s financial conflict of interest laws for public officials. The purpose is to cover both actual and apparent conflict of interest situations between a public official’s private interest and their public duties.

The basic rule is that no public official shall make, participate in making, or in any way attempt to use their official position to influence a governmental decision if they know, or have reason to know, that they have a financial interest in the decision.

Who Should Avoid Financial Conflicts of Interest?

All decision-making public officials for local government agencies which includes every member, officer, and employee of a local government agency, as well as consultants to a local agency who meet certain criteria. Public officials may also include members of public agency boards, councils, commissions, and committees with decision-making authority.

If you are a public official who may make, participate in making, or in any way influence a public agency decision, this resource will help determine whether you have a potential financial conflict of interest that has to be addressed.

Do I Have a Financial Conflict of Interest Under the Political Reform Act?

Before making a decision or discussing a future decision of your public agency, try to answer the following questions:

1. Will you be “participating in a decision?”

You are “participating in a decision” of your public agency by doing any of the following:

- **Making an actual decision** — Voting, making an appointment, or taking an action that obligates or commits your public agency.
- **Contributing to the decision-making process** — Making a recommendation or participating in negotiations about the public agency decision.
- **Influencing the decision** — Making your position known, discussing the decision with other agency officials, providing reports, or influencing others (such as staff or consultants) who are involved in the decision-making process.

2. Does the decision affect one or more of your “financial interests?”

A financial conflict of interest can exist if the public agency decision you are participating in affects (positively or negatively) any of your “financial interests” as described in the Act and listed here:

- **Business Interest:** Any for-profit business entity in which you or your immediate family (spouse and dependent children) have a direct or indirect investment worth \$2,000 or more. You also have a financial interest in any business in which you are an employee, manager, officer, director, owner, partner or trustee, regardless of whether you have an investment or receive income from the entity.
- **Source of Gross Income:** A public official has a financial interest in any source of income that is either received by or promised to the official and totals \$500 or more in the 12 months before the decision. Income is very broadly defined as “a payment received” with few exceptions. Examples of income include salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, loan, forgiveness or payment of debt, or community property interest in income of a spouse. The FPPC regulations make it clear that a conflict of interest results whenever either the amount or the source of an official’s income is materially affected by a decision. Also, a decision that foreseeably will materially affect an official’s employer would generally necessitate a disclosure and disqualification, even if the amount of income received by the official was not affected. Common exclusions from income include loans from commercial lending institutions in the ordinary course of business made on terms available to the general public, campaign contributions, government salaries and benefits, monetary inheritances, and alimony or child support payments.
- **Gift Interest:** Any gift(s) — cash, goods or services — promised or given to you in the past 12 months by a person, business, or other entity totaling \$590 or more in value. The dollar limit is adjusted biennially in odd-numbered years based on the Consumer Price Index (CPI).
- **Real Property Interest:** Any real property interest, including ownership, mortgage, lease, easement or license, or option to acquire such interest in real property, located in the public agency’s jurisdiction owned directly or indirectly by you or your immediate family if the fair market value of the real property interest is \$2,000 or more. Month-to-month tenancies are not considered an interest in real property. Interest in real property also includes a pro rata share of a business entity’s real property or trust in which the public official or immediate family owns, directly or indirectly, a 10 percent interest or greater.

- **Personal Financial Interest:** Any personal expense, income, asset, or liability of you or your immediate family (spouse and dependent children).
- 3. Will the public agency decision have a reasonably foreseeable “material financial effect” on any of your financial interests?**

Participation in a decision that affects your financial interest creates a conflict of interest only if it is reasonably foreseeable (a realistic possibility) and the effect is “material.”

In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result can be expected only in extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on a financial interest other than an interest explicitly involved, described above, the following factors should be considered:

- a.** The extent to which the occurrence of the financial effect is contingent upon intervening events.
- b.** Whether you should anticipate a financial effect on your financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
- c.** Whether you have a financial interest that is of the type that would typically be affected by the terms of the governmental decision.
- d.** Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of your financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

This is not an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable.

“Material” means important or significant, and often depends upon whether or not the interest is explicitly involved. For each financial interest you identified as potentially affected by the decision, review the corresponding analysis below to determine whether the effect is material.

- **Business, Source of Income, and Gift Financial Interests — Explicitly Involved:** If your financial interest is explicitly involved (i.e., the subject of or a named party in the decision), the financial effect of the decision on your financial interest is presumed to be material unless you can demonstrate that the decision will not have a financial effect on your financial interest.
- **Business, Source of Income, and Gift Financial Interests — Not Explicitly Involved:** A reasonably foreseeable financial effect on a business entity is material if it results in 1) a change in gross revenues or in the value of assets or liabilities by at least \$1 million or 5 percent of annual gross revenues, or 2) a change in business expenses of \$250,000 or more or of 1 percent of annual gross revenues and the change is at least \$2,500; or if the business entity owns property that is the subject of the decision or would be substantially effected by the decision.
- **Real Property Interest — Explicitly Involved:** When your real property interest is explicitly involved in a public agency decision, the reasonably foreseeable financial effect is presumed material. A real property interest is explicitly involved when the decision includes matters such as the property's zoning, annexation, sale, lease, licensed or permitted use, taxes, fees, or improved services to the property.
- **Real Property Interest — Not Explicitly Involved:** When the real property is not explicitly involved, a decision's reasonably foreseeable financial effect is presumed material if, among other things, any part of the property in which you have a financial interest is within a 500-foot radius of the real property involved in the decision, unless it is clear the decision will not have a measurable impact on your property. If your property is located more than 500 feet, but less than 1,000 feet, from the property line of the property involved in the decision, the financial effect is material if the decision would have certain specified impacts, such as changing the parcel's view, noise or traffic level, development or income-producing potential, best use, character, or market value.

If the real property in which you have a financial interest is 1,000 feet or more from the property involved in the decision, the financial effect of the decision on your real property interest is presumed not to be material unless the specific circumstance of the decision and the nature of your property interest make it reasonably foreseeable that the decision will have a significant financial effect on your real property interest. Factors include the development potential of the property, use of the property, and character of the neighborhood.

- **Real Property Interest — Leasehold Interest:** If you have a leasehold interest in real property as opposed to an ownership interest, your leasehold interest in the property is material if the decision changes the termination date of the lease, affects the potential rental value of the property, changes your actual or legally allowable use of the property, or impacts your use and enjoyment of the property
- **Personal Financial Interest:** The financial effect of a decision on your personal financial interest is material if the decision may result in you or your immediate family member receiving a financial benefit or loss of \$500 or more in any 12-month period due to the decision.

5. Does the decision affect your financial interests differently from the “public generally?”

Even if you answered “yes” to the first three questions, you have a financial conflict of interest only if the decision affects you differently from the public in general. The financial effect of a decision is indistinguishable from its effect on the public generally if you establish that a significant segment of the public is affected and the effect on your financial interest is not unique compared to the effect on the significant segment.

A significant segment of the public is at least 25 percent of:

- **Business Interest —** All businesses or nonprofit entities within your jurisdiction.
- **Real Property Interest —** All real property, commercial real property, or residential real property within your jurisdiction.
- **Individuals —** All individuals within your jurisdiction.

If you are elected to represent a specific district/area in the public agency, your “jurisdiction” is that district/area; otherwise, your jurisdiction is the agency’s jurisdiction.

A significant segment of the public is at least 15 percent of residential property within your agency’s jurisdiction if the only interest you have in the decision is your primary residence.

Specific rules exist for special circumstances involving public service and utility charges, general use or licensing fees, decisions with limited neighborhood effects, rental properties, required representative interests as part of a board or commission membership, states of emergency, and governmental interests.

What Should I Do if a Financial Conflict Exists?

1. Do not participate in the decision.

If you answered “Yes” to all four questions above, you most likely have a financial conflict of interest and you are prohibited from participating in the decision-making process. Do not participate in the discussion or render any opinion or advice, and do not act in any way that might influence the decision.

2. Disclosure and recusal are required.

State law requires you to publicly disclose your financial conflict of interest on the record and excuse yourself from the meeting while the matter is being considered in open session. You generally do not have to excuse yourself on consent calendar items unless the item is pulled, but must publicly disclose the type of your financial interest (i.e., business entity, real property, etc.) that gives rise to the conflict of interest.

3. Do not commit violations of the Political Reform Act (PRA)

Violation of the PRA can result in administrative fines, civil penalties, and criminal sanctions.

Other Conflict of Interest Laws

Two other key financial conflict of interest laws apply to public officials that you may encounter as either a board or council member, public employee, or consultant in the decision-making process:

1. Self-Interested Contracts (Government Code Section 1090)

This key law prohibits you, as a local official or employee, from voting on, discussing, or negotiating a proposed contract or sale with your public agency if you could receive some financial gain or loss from the contract or sale. Even if you abstain as a board or council member, the entire board or council is prohibited from entering into the contract unless an exception applies. Any contract signed by a public agency board or council in violation of Section 1090 is void. The rule is different if you are a decision-making employee not on the board or council. A public agency employee may disclose their financial interest in the public agency contract and be disqualified from any involvement, allowing the board or council to enter the contract legally. Violation of this law will void the contract or sale and may result in permanent forfeiture of office for elected officials. There are limited exceptions to this law that are beyond the scope of this resource.

2. Campaign Contributions (Government Code Section 84308)

If you are a directly elected or appointed public official, this law (known as the Levine Act) prohibits you from participating in proceedings involving licenses, permits, or other entitlements for use that affect a person, business, or other entity from which you have received a campaign contribution of more than \$250 within the preceding 12 months, and requires you to disclose on the record the receipt of any such contribution. In addition, this law prohibits you from accepting campaign contributions of more than \$250 from a party or participant in the proceeding for 12 months after a final decision is rendered in a proceeding.



Conflict in Government Contracts — Government Code **Section 1090**

Generally, government officials or employees with personal financial interests in a government contract cannot participate in or influence the creation of that contract. California Government Code section 1090 (“Section 1090”) prohibits members of the Legislature, state, county, district, judicial district, and city officers or employees (and certain consultants) from having a financial interest in any contract made by them in their official capacity or by any governmental body or board of which they are members.

A contract made in violation of Section 1090 carries with it serious consequences. With certain exceptions for independent contractors, a willful violation is punishable as a felony and the offending person may be banned from office for life. Prosecutors and the Fair Political Practices Commission (FPPC) can sue for civil penalties or impose administrative fines. Contracts made in violation of Section 1090 are void, even when the contract is to the advantage of the government agency. All benefits flowing from the contract obtained by the non-government entity may be restored to the agency (disgorged) without any offset to the other contracting party for goods or services provided.

Members of state or local governing bodies and state or local employees are generally subject to Section 1090. Consultants of an agency may be subject to Section 1090 if they have responsibilities for contracting decisions, act in a “staff capacity,” or are otherwise involved in the making of a government contract unless they fall under the exceptions outlined in Section 1097.6. If you believe that Section 1090 may apply to your situation, you should engage qualified legal counsel to help you navigate these issues.

Do I Have a Disqualifying Conflict of Interest Under Section 1090?

The FPPC is the state body responsible for ensuring that California state and local governments operate ethically under the requirements of the Political Reform Act. The FPPC applies a six-step analysis to determine whether an official or employee has a disqualifying conflict of interest under Section 1090.

1. Is the official or employee subject to the provisions of Section 1090?

All state, county, district, judicial district and city officers and employees are subject to the law. Independent contractors may be subject to Section 1090 as well unless they fall under the exceptions outlined in Section 1097.6, which went into effect on January 1, 2024. Now, independent contractors who enter into a contract with a public agency to perform one phase of a project and seek then to enter into a subsequent contract for a later phase of the same project are not “officers” under Section 1090 if their duties and services related to the initial contract did not include assisting the public agency with any portion of a request for proposals,

request for qualifications, or any other subsequent or additional contract with the agency. However, even if independent contractors assist the public agency with contracting matters, they may enter into a subsequent contract with the public agency for a later phase of the same project so long as: (1) their prior participation during an initial stage of a project was limited to conceptual, preliminary, or initial plans or specifications; and (2) all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.

2. Does the decision or action at issue involve a contract?

One looks to general principles of contract law to determine whether a contract is involved in a process or decision. Sections 1090 and 1097 require that all transactions be viewed in a broad manner and avoid narrow and technical definitions of “contract.” Under this law, “a contract” includes a request for proposal, MOU, construction contract, lease or other real property agreements, purchase orders and agreements, any exchange of goods or services for consideration whether in writing or not and grants of money or property or other things of value. Generally, a contract exists when two or more parties agree to exchange goods or services with the expectation that each will receive something of value in return.

3. Is the official or employee participating in the making of a contract?

“Making a contract” is broadly construed and includes any participation in the making of the contract including, but not limited to involvement in preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, solicitation for bids and other actions. The understanding of “participation” is very broad and requires careful analysis. Also, in relation to a public body, such as a city council or district board, when members of a public board, commission or similar body have the power to execute contracts, each member is presumed to be involved in the making of all contracts by his or her board regardless of whether the member actually participates in the making of the contract. The presence of one person with a financial conflict of interest in a contract prevents the entire body from acting on that contract. Thus, when council or board members are involved, it is irrelevant whether or not they recuse themselves from the decision because the law usually presumes that the official was involved in entering the contract.

4. Does the official or employee have a “financial interest” in the contract?

A person has a financial interest in a contract if he or she might profit or suffer a loss from the contract in any way. Said another way, any kind of financial impact – good or bad – causes a conflicting financial interest. The impact need not even be certain. Although Section 1090 does not specifically define “financial interest,” the term is liberally and broadly construed to include indirect, as well as direct interests. An indirect interest often arises when an official or employee has a business or financial relationship with a person or entity who is contracting with the government entity. A person is conflicted under Section 1090 when their financial interest might in any way prevent the person from exercising absolute loyalty and undivided allegiance to the best interests of the public agency. Any separate, personal interest of an officer or employee in a government-made contract may constitute an indirect interest. An official has a conflict of interest when that official’s spouse has a financial interest in the making of the contract. This is because the law presumes that an official is financially interested in his or her spouse’s income or financial interest.

5. Does either a “remote interest” or non-interest apply?

By law, there are various statutory exceptions to Section 1090’s prohibition against an entire board or agency making a contract. Where the financial interest involved is deemed a “remote interest,” as defined in Section 1091, the contract may be made if: 1) the officer in question discloses his or her financial interest in the contract to the public agency, 2) such interest is noted in the entity’s official records and 3) the officer abstains from any participation in the making of the contract.

Section 1091 provides a list of 16 “remote interests.” These provisions are complex and one should not rely on the application of these exceptions without first consulting with counsel or seeking the advice of the FPPC.

Non-interests apply to all persons covered by Section 1090: Non-interests are set forth in Section 1091.5. There are 13 of these statutory non-interests. In essence, these constitute a legislative recognition that certain financial interests are so remote or speculative as to not require disqualification from participating in the making of a contract, or which are designed to serve or accommodate some other public policy, such as one’s interest in one’s own salary from a government entity or the receipt of public

services. A non-interest means a person is not disqualified from participating in the making of a contract. Some non-interests do still require the official to disclose the interest in the official records. Again, as with “remote interests,” these non-interest exceptions are complex and one should seek the advice of legal counsel or the FPPC before relying on one of these statutory exceptions.

6. Does the Rule of Necessity apply?

The Rule of Necessity applies only to government entities, not individuals. In very limited circumstances, a Rule of Necessity has been applied to allow the making of a contract that Section 1090 would otherwise prohibit. Under the Rule of Necessity, a government agency may acquire an essential good or service in an emergency when to delay the contract would be to the public detriment, or when no source other than that which triggers the conflict is available. When the Rule of Necessity applies, due to a conflict with an official on a multi-member board or body, the interested official must abstain from any participation in the decision.

What Are the Consequences if Section 1090 is Violated?

- With certain exceptions for independent contractors, a willful violation or aiding and abetting a willful violation of Section 1090 is punishable as a felony and carries a sentence of up to three years in state prison and a lifetime ban from holding office.
- A prosecutor or the FPPC can bring a civil action to collect civil fines of up to \$10,000 or three times the amount of the benefit received under the contract.
- The FPPC can impose administrative fines of up to \$5,000 per violation.
- The contract is void and suit may be brought to have the contract declared void.
- All proceeds, payments and profits received or obtained as a result of the contract must be returned to the government entity.
- Because most Section 1090 violations also violate the Political Reform Act’s prohibition against having a financial interest in a governmental decision, the full array of penalties available under that Act also apply, including misdemeanor criminal liability, civil penalties, administrative fines and injunctive relief.

Desert Community Energy
Unaudited Statement of Net Position Prev Year Comparison
As of March 31, 2025

	<u>Mar 31, 25</u>	<u>Mar 31, 24</u>	<u>\$ Change</u>	<u>% Change</u>
ASSETS				
Current Assets				
Checking/Savings				
1100 · Unrestricted Funds				
1103 · CAMP Account	12,643,150	10,500,000	2,143,150	20.41%
1104 · LAIF Account	6,451,944	-	6,451,944	100.0%
1105 · Operating Account -8099	199,405	199,749	(345)	(0.17%)
1109 · DDM Marketplace Sweep - 0991	6,017,196	10,863,094	(4,845,898)	(44.61%)
1115 · Lockbox -4446	1,631,232	109,888	1,521,344	1,384.45%
Total 1100 · Unrestricted Funds	<u>26,942,927</u>	<u>21,672,731</u>	<u>5,270,196</u>	<u>24.32%</u>
1145 · Fair Value Adjustment	5,479	-	5,479	100.0%
1199 · Restricted Funds				
1110 · Money Market -5470	405,775	405,773	2	0.0%
1120 · FSR Letter of Credit Collateral	147,000	147,000	-	0.0%
Total 1199 · Restricted Funds	<u>552,775</u>	<u>552,773</u>	<u>2</u>	<u>0.0%</u>
Total Checking/Savings	<u>27,501,181</u>	<u>22,225,504</u>	<u>5,275,677</u>	<u>23.74%</u>
Accounts Receivable				
1221 · Accounts Receivable	15,055,588	15,549,976	(494,388)	(3.18%)
1223 · Accrued Accounts Receivable	1,660,009	1,684,434	(24,424)	(1.45%)
1250 · Interest Receivable	71,100	-	71,100	100.0%
Total Accounts Receivable	<u>16,786,697</u>	<u>17,234,409</u>	<u>(447,713)</u>	<u>(2.6%)</u>
Other Current Assets				
1225 · Allowance for Doubtful Accounts	(3,206,731)	(4,689,171)	1,482,440	31.61%
1240 · Prepaid Expenses	(17,781)	447,189	(464,970)	(103.98%)
Total Other Current Assets	<u>(3,224,512)</u>	<u>(4,241,982)</u>	<u>1,017,470</u>	<u>23.99%</u>
Total Current Assets	<u>41,063,366</u>	<u>35,217,931</u>	<u>5,845,435</u>	<u>16.6%</u>
Other Assets				
1170 · Deposits/Bonds	1,010,584	710,584	300,000	42.22%
Total Other Assets	<u>1,010,584</u>	<u>710,584</u>	<u>300,000</u>	<u>42.22%</u>
TOTAL ASSETS	<u>42,073,950</u>	<u>35,928,515</u>	<u>6,145,435</u>	<u>17.11%</u>
LIABILITIES & NET POSITION				
Liabilities				
Current Liabilities				
Accounts Payable				
2110 · Accounts Payable	2,876,670	1,975,378	901,293	45.63%
2112 · Accrued Accounts Payable	2,122,784	1,971,551	151,233	7.67%
2120 · Due to Other Governments	423,743	1,009,901	(586,158)	(58.04%)
Total Accounts Payable	<u>5,423,197</u>	<u>4,956,830</u>	<u>466,367</u>	<u>9.41%</u>
Other Current Liabilities				
2115 · NEM Escrow Account	57,175	-	57,175	100.0%
2230 · Taxes payable				
2231 · Utility Users Tax (UUT)	79,082	80,221	(1,140)	(1.42%)
2232 · Electric Energy Surcharge	3,146	2,712	434	15.99%
Total 2230 · Taxes payable	<u>82,227</u>	<u>82,933</u>	<u>(706)</u>	<u>(0.85%)</u>
Total Other Current Liabilities	<u>139,402</u>	<u>82,933</u>	<u>56,469</u>	<u>68.09%</u>
Total Current Liabilities	<u>5,562,599</u>	<u>5,039,763</u>	<u>522,836</u>	<u>10.37%</u>
Long Term Liabilities				
2260 · Vendor Security Deposits				
2262 · PPA Development Security	225,000	225,000	-	0.0%
2263 · Contract Development Deposit	180,000	180,000	-	0.0%
Total 2260 · Vendor Security Deposits	<u>405,000</u>	<u>405,000</u>	<u>-</u>	<u>0.0%</u>
Total Long Term Liabilities	<u>405,000</u>	<u>405,000</u>	<u>-</u>	<u>0.0%</u>
Total Liabilities	<u>5,967,599</u>	<u>5,444,763</u>	<u>522,836</u>	<u>9.6%</u>
Net Position				
31000 · Restricted Net Position	147,000	147,000	-	0.0%
32000 · Unrestricted Net Position	35,039,779	19,167,378	15,872,401	82.81%
Net Revenue	919,571	11,169,374	(10,249,803)	(91.77%)
Total Net Position	<u>36,106,350</u>	<u>30,483,752</u>	<u>5,622,598</u>	<u>18.45%</u>
TOTAL LIABILITIES & NET POSITION	<u>42,073,950</u>	<u>35,928,515</u>	<u>6,145,435</u>	<u>17.11%</u>

Desert Community Energy
Unaudited Statement of Net Position Prev Year Comparison
As of March 31, 2025

1

The variance is primarily driven by significantly higher actualized costs compared to the prior year, particularly in the resource adequacy and renewable energy markets.

Desert Community Energy
Unaudited Changes to Net Position Budget vs. Actual
July 2024 through March 2025

	Jul '24 - Mar 25	Budget	\$ Over Budget
Ordinary Revenue/Expense			
Revenue			
5010 · Electricity Sales	50,423,269	51,512,642	(1,089,373)
5100 · Other Revenue	6,568,581	1,055,274	5,513,307
Total Revenue	56,991,850	52,567,916	4,423,934
Expense			
4100 · Cost of Electricity			
4105 · Electricity Purchase	21,339,924	21,104,429	235,495
4110 · Resource Adequacy Settlement	15,443,154	15,986,013	(542,859)
4115 · Carbon Free Settlement	4,916,358	3,553,858	1,362,500
4120 · Renewable Energy Cr. Settlement	5,753,492	3,819,181	1,934,311
4125 · Market Charges	3,794,243	3,327,078	467,165
4175 · CPUC YARA Penalty	1,750,159	1,750,159	0
Total 4100 · Cost of Electricity	52,997,330	49,540,718	3,456,612
4200 · Accounting / Bank Services	6,226	5,679	547
4353 · Insurance	6,033	6,242	(209)
4423 · Office Supplies	-	-	-
4425 · Legal Services	60,696	62,117	(1,421)
4431 · Professional Services	169,611	186,022	(16,411)
4432 · Consultants	1,747,744	1,790,576	(42,832)
4433 · Outreach Services	16,410	17,724	(1,314)
4435 · Technology Costs (IT)	4,543	4,654	(111)
4440 · Postage	10,879	10,766	114
4441 · Printing	8,080	8,694	(614)
4452 · Marketing	5,150	4,403	746
4455 · Customer Programs	1,628	39,128	(37,500)
4500 · Registrations/Memberships	65,685	113,790	(48,105)
4750 · Bad Debt Expense	1,817,420	1,512,487	304,933
Total Expense	56,917,435	53,303,000	3,614,435
Net Ordinary Revenue	74,415	(735,084)	809,499
Other Revenue/Expense			
Other Revenue			
5900 · Investment Revenue	792,368	754,115	38,253
5925 · Gain/(Loss) in Investments	52,778		52,778
Total Other Revenue	845,146	754,115	91,031
Other Expense			
4610 · Interest Expense	(10)	-	(10)
Total Other Expense	(10)	-	(10)
Net Other Revenue	845,156	754,115	91,041
Net Revenue	919,571	19,031	900,540

Desert Community Energy
Unaudited Changes to Net Position Budget vs. Actual
July 2024 through March 2025

1

On March 17, 2025, the Desert Community Energy Board adopted the Fiscal Year 2024–25 Budget Amendment. The budget column presented herein reflects the amended budget as approved by the Board.

Desert Community Energy
Unaudited Changes to Net Position Prev Year Comparison
July 2024 through March 2025

	<u>Jul '24 - Mar 25</u>	<u>Jul '23 - Mar 24</u>	<u>\$ Change</u>	<u>% Change</u>
Ordinary Revenue/Expense				
Revenue				
5010 · Electricity Sales	50,423,269	53,439,095	(3,015,826)	(5.64%)
5100 · Other Revenue	6,568,581	637,987	5,930,594	929.58%
Total Revenue	<u>56,991,850</u>	<u>54,077,082</u>	<u>2,914,768</u>	<u>5.39%</u>
Expense				
4100 · Cost of Electricity				
4105 · Electricity Purchase	21,339,924	27,944,894	(6,604,969)	(23.64%)
4110 · Resource Adequacy Settlement	15,443,154	6,632,809	8,810,345	132.83%
4115 · Carbon Free Settlement	4,916,358	674,250	4,242,108	629.16%
4120 · Renewable Energy Cr. Settlement	5,753,492	-	5,753,492	100.0%
4125 · Market Charges	3,794,243	3,494,854	299,389	8.57%
4175 · CPUC YARA Penalty	1,750,159	650,105	1,100,054	169.21%
Total 4100 · Cost of Electricity	<u>52,997,330</u>	<u>39,396,911</u>	<u>13,600,419</u>	<u>34.52%</u>
4200 · Accounting / Bank Services	6,226	1,755	4,471	254.77%
4353 · Insurance	6,033	6,442	(409)	(6.34%)
4423 · Office Supplies	-	1,375	(1,375)	(100.0%)
4425 · Legal Services	60,696	131,272	(70,576)	(53.76%)
4431 · Professional Services	169,611	133,745	35,867	26.82%
4432 · Consultants	1,747,744	1,748,229	(485)	(0.03%)
4433 · Outreach Services	16,410	23,448	(7,038)	(30.02%)
4435 · Technology Costs (IT)	4,543	4,209	334	7.94%
4440 · Postage	10,879	12,355	(1,476)	(11.95%)
4441 · Printing	8,080	9,072	(991)	(10.93%)
4452 · Marketing	5,150	4,004	1,146	28.62%
4455 · Customer Programs	1,628	-	1,628	100.0%
4500 · Registrations/Memberships	65,685	71,333	(5,648)	(7.92%)
4750 · Bad Debt Expense	1,817,420	1,603,152	214,268	13.37%
Total Expense	<u>56,917,435</u>	<u>43,147,301</u>	<u>13,770,134</u>	<u>31.91%</u>
Net Ordinary Revenue	<u>74,415</u>	<u>10,929,781</u>	<u>(10,855,366)</u>	<u>(99.32%)</u>
Other Revenue/Expense				
Other Revenue				
5900 · Investment Revenue	792,368	240,583	551,785	229.35%
5925 · Gain/(Loss) in Investments	52,778	-	52,778	100.0%
Total Other Revenue	<u>845,146</u>	<u>240,583</u>	<u>604,563</u>	<u>251.29%</u>
Other Expense				
4610 · Interest Expense	(10)	990	(1,000)	(101.03%)
Total Other Expense	<u>(10)</u>	<u>990</u>	<u>(1,000)</u>	<u>(101.03%)</u>
Net Other Revenue	<u>845,156</u>	<u>239,593</u>	<u>605,563</u>	<u>252.75%</u>
Net Revenue	<u><u>919,571</u></u>	<u><u>11,169,374</u></u>	<u><u>(10,249,803)</u></u>	<u><u>(91.77%)</u></u>

1

Costs for resource adequacy products have increased significantly in fiscal year 2024-25. This is coupled with DCE's need to procure additional products in an effort to achieve compliance with CPUC regulations, especially with new Slice of Day RA requirements..

2

Costs for renewable products increased significantly in fiscal year 2024-25 in addition to DCE procuring more products to be compliant with California Renewable Portfolio Standards and meet its Carbon Free objectives.

**DESERT COMMUNITY ENERGY
INVESTMENT REPORT
FOR MARCH 31, 2025**

Description	Carrying Amount	% of Total	Fair Market Value		% of Total	Annual %age Yield
CASH AND INVESTMENTS UNDER THE DIRECTION OF DCE						
River City Bank - Operating	\$ 199,405	0.73%	\$ 199,405		0.73%	N/A
River City Bank - DDM Marketplace Sweep	\$ 6,017,196	21.88%	\$ 6,017,196		21.88%	4.43%
River City Bank - Lockbox	\$ 1,631,232	5.93%	\$ 1,631,232		5.93%	N/A
River City Bank - Money Market	\$ 405,775	1.48%	\$ 405,775		1.48%	2.28%
River City Bank - Stand-by FSR Letter of Credit	\$ 147,000	0.53%	\$ 147,000		0.53%	N/A
Local Agency Investment Fund (LAIF)	\$ 6,451,944	23.47%	\$ 6,457,423	[a]	23.48%	4.34%
CAMP	\$ 12,643,150	45.98%	\$ 12,643,150		45.97%	4.47%
Overall Total	\$ 27,495,702	100.00%	\$ 27,501,181		100.00%	

Note:

[a] Source of Market Values - LAIF, State of California Pooled Money Investment Account Market Valuation - March 2025. Paper Gain/(Loss) was 0.085%. Fair market value includes accrued interest.

DCE's investment portfolio demonstrates its ability to fully sustain its expenditure requirements for at least the next six months and beyond including all liquidity requirements for the foreseeable future.

Duly submitted by:



Claude T. Kilgore, CPA
Director of Finance