



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: JP Ross

SUBJECT: Amendment on the Sunrun 10-year 0.5MW Local Greater Bay Area Resource Adequacy contract

DATE: July 20, 2022

Recommendation

Adopt a Resolution authorizing the CEO to negotiate and execute an amendment on the Sunrun 10-year 0.5MW Local Greater Bay Area Resource Adequacy contract.

Background and Discussion

On July 17, 2019 the EBCE Board of Directors authorized the CEO to negotiate and execute an agreement with Sunrun to deliver 0.5MW of local resource adequacy from Solar and Storage projects on low income multi-family housing properties in Alameda County.

Sunrun has communicated an inability to interconnect Solar and Storage projects that can provide resilience on multi-family projects based on PG&E's Virtual Net Energy Metering (VNEM) tariff language. The VNEM tariff allows customers in a multi-family building to receive net metering bill credits from a single solar system connected to the building's main meter. These bill credits allow residents of the facility to benefit from lower bills once the solar system has been installed. PG&E (and the other IOUs that approve VNEM and interconnection applications) has not approved Multi-Family solar + storage projects that provide resilience, citing that the VNEM tariff does not explicitly state that solar paired storage can provide on-site resilience under VNEM. The CPUC has directed parties to resolve this issue. Sunrun has been working with PG&E to resolve this stalemate, but no projects have yet been approved for VNEM

interconnection. In the meantime, Sunrun has continued to develop solar only projects under the VNEM tariff, but those projects cannot provide Resource Adequacy to EBCE.

In light of these delays Sunrun and EBCE have developed an alternate Resource Adequacy solution that can deliver the contracted RA to EBCE. The amended contract delivers RA over a 10-year term that meets EBCE's Incremental Resource procurement requirement as specified in PUC decision 19-11-016. Sunrun will deliver the RA through new Proxy Demand Response assets across California. The revised contract price will be discounted to account for delivery delays and the fact that the projects are no longer coming from in territory projects.

Sunrun and EBCE are still committed to delivering solar and storage projects to residents of low-income multi-family affordable housing units. The Resilient Home program continues to deliver resilience to our customers and Sunrun is still committed to meeting the 20% minimum contract capacity with projects on low income and multi-family housing units. When the SGIP/VNEM tariff issues have been resolved, Sunrun will include low-income multi-family projects into the EBCE Load Modification agreement, delivering resilience and bill savings to participating customers.

Fiscal Impact

EBCE has negotiated a price reduction from Sunrun based on the change from in-territory low-income multi-family projects to statewide single-family projects. EBCE will achieve lower procurement costs than projected with this amendment.

Attachments

- A. Resolution Authorizing the CEO to negotiate and execute an amendment to the Sunrun 10-year 0.5MW Resource Adequacy contract
- B. Amendment No. 1 to Energy Storage Resource Adequacy Agreement

RESOLUTION NO. __

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING AN AMENDMENT
ON THE SUNRUN 10-YEAR 0.5MW LOCAL GREATER BAY AREA RESOURCE ADEQUACY
CONTRACT**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS in July 2019 the Board of Directors authorized the CEO to negotiate and execute a contract with Sunrun for a 10-year 0.5MW Local Greater Bay Area Resource Adequacy contract

WHEREAS Sunrun has not been able to interconnect multi-family affordable housing solar + storage projects due to current Virtual Net Energy Metering (VNEM) tariff language that does not explicitly allow for storage that provides on-site resilience

WHEREAS Sunrun and EBCE have negotiated a contract amendment that will deliver incremental Resource Adequacy at a discount to the original contract price from resources throughout California

WHEREAS Sunrun and EBCE are committed to delivering solar + storage on multi-family affordable housing units through the Resilient Home Program

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board of Directors hereby authorizes the CEO to negotiate and execute an amendment on the Sunrun 10-year 0.5MW Resource Adequacy contract

ADOPTED AND APPROVED this 20th day of July, 2022.

Dianne Martinez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

Amendment No. 1 to Energy Storage Resource Adequacy Agreement

This Amendment No. 1 (the "**Amendment**") to the Energy Storage Resource Adequacy Agreement between East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") and Sunrun, Inc., a Delaware corporation ("**Seller**" or "**Sunrun**") (Buyer and Seller are each hereinafter referred to as "**Party**", and together as "**Parties**") is effective as of July XX, 2022 (the "**Amendment Effective Date**").

WHEREAS, Buyer and Seller previously entered into that certain Energy Storage Resource Adequacy Agreement as of July 29, 2019 (the "**Agreement**"); and

WHEREAS, Buyer and Seller mutually desire to amend the Agreement as set forth below.

NOW THEREFORE in consideration of the mutual promises and covenants set forth herein, it is agreed:

1. The following defined terms on the Cover Sheet of the Agreement are amended and restated as follows:

"Contract Price: \$ [REDACTED] per MW"

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 19-11-016, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

2. The following defined term is added to Section 1.1 after the definition of "IDD Delay Damages" and before the definition of "Indemnifiable Loss(es)":

"Incremental Resources" means those resources that can be shown to be incremental according to the criteria set forth in CPUC Decision 19-11-016 and are available during the time periods specified by the applicable Governmental Authority, as such criteria or time periods may be amended or revised.

3. The first sentence of Section 2.2(b) is hereby amended and restated as follows:

"The 'Delivery Term' is the period commencing on the Initial Delivery Date and continuing for the number of Contract Years specified on the Cover Sheet following July 1, 2023."

4. The second sentence of Section 4.1(c) is hereby amended and restated as follows:

"For each day beginning with the day after the Expected Initial Delivery Date until and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting no more than two hundred seventy (270) days ("**IDD Cure Period**"), Seller shall pay IDD Delay Damages to Buyer.

5. The last sentence of Section 5.4(c) is hereby deleted in its entirety. For the avoidance of doubt, Seller's Portfolio may, at Seller's sole election, contain only single-family residences located within California and may include the use of applicable smart thermostats to fulfill its requirements under this Agreement. For the avoidance of doubt, there shall be no Local RA Attributes requirement under this

Agreement.

6. The following is added to the end of Section 14.1 (“Seller’s Representations and Warranties”):

(h) The Product derives from Incremental Resources.

7. Notwithstanding anything to the contrary in the Agreement, Seller shall provide (i) RA Attributes from the Project equal to 0.2 MW by September 1, 2022 and (ii) total overall RA Attributes from the Project equal to 0.5 MW by July 1, 2023, each of which shall constitute a Contract Amount under the Agreement. Seller’s failure to provide the Contract Amounts detailed under (i) and (ii) of the foregoing sentence, notwithstanding the other provisions of Section 7.1 and the proviso under Section 7.1(a)(vi), shall be deemed a Seller Event of Default and shall result in Seller’s obligation to pay Buyer direct damages or to provide Buyer with substitute Capacity Attributes (each in accordance with Section 7.1(a)(vi)(A)-(B)). On or before May 15, 2023, Seller shall provide written notice to Buyer of Seller’s ability to provide 0.5 MW of RA Attributes by July 1, 2023. If at any time Seller is unable to provide the applicable RA Attributes to Buyer from the Project, at Seller’s option, Seller may purchase and provide to Buyer an equivalent amount of RA Attributes from third party resources provided such resources are at least equivalent to the Project, such that Buyer is able to count the RA Attributes as Incremental Resources.

8. Notwithstanding anything to the contrary in the Agreement, in the event that Seller is not able to provide at least 0.5 MW of RA Attributes to Buyer by July 1, 2023, Seller will provide at least ninety (90) days prior written notice to Buyer specifying that amount of RA Attributes that Seller can provide to Buyer by July 1, 2023 (“**Revised RA Capacity Notice**”). In the event that Seller provides Buyer with a Revised RA Capacity Notice, then the Parties agree that the following shall automatically occur: (i) in lieu of any other damage or penalty assessments under this Agreement, Seller shall pay Buyer a one-time payment equal to (a) \$40 multiplied by (b) a number that is equal to 500 kW minus the number of kW that Seller is able to provide as specified in the Revised RA Capacity Notice and (ii) the Contract Amount for RA Attributes that Seller is required to provide under this Agreement shall automatically be revised (without the need for further amendment to the Agreement) to the amount specified in the Revised RA Capacity Notice.

9. Capitalized terms used herein and not otherwise defined herein have the respective meanings assigned to them in the Agreement. Except as expressly amended by this Amendment or any additional amendments made pursuant to Section 21.2 of the Agreement, the Agreement remains in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail. Each Party warrants that it has the authority to enter into this Amendment and perform its obligations hereunder. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, Buyer and Seller hereby execute this Amendment as of the Amendment Effective Date.

SUNRUN, INC.	EAST BAY COMMUNITY ENERGY AUTHORITY
By:	By:
Name:	Name:
Title:	Title:
	<u>APPROVED AS TO FORM:</u>
	By:
	Name:
	Title: General Counsel