

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 12**

TO: Board of Directors

FROM: Gordon Samuel, Chief Operating Officer

SUBJECT: CC Power Tumbleweed Long-Duration Energy Storage Project Amendment 2

DATE: September 12, 2024

Recommendation

Authorize VCE's continued participation in the Tumbleweed Energy Storage Services Agreement under the terms of the Second Amendment.

Background

In February 2022, the Board approved VCE entering a joint procurement of the Tumbleweed Long-Duration Storage (LDS) project through California Community Power (CC Power) which is a joint powers agency made up of multiple community choice aggregators (CCAs). The JPA was created for the purpose of aggregating CCA buying power and to taking advantage of economies of scale and joint action on energy related matters (e.g. joint programs). The Tumbleweed LDS project was procured in response to the California Public Utilities Commission's (CPUC) Mid-Term Reliability (MTR) procurement mandate for development of new long-lead time resources including LDS capacity, which is defined as storage that can discharge to the grid for eight or more hours. The project is 75 MW / 600 MWh and VCE's share is 4.15%, or 3.11 MW / 24.9 MWh.

Since execution of the Tumbleweed Energy Storage Services Agreement (ESSA) by CC Power and the developer, REV Renewables (REV), the agreement has been amended once to increase the capacity from 69 MW to 75 MW, which the parties agreed to (Resolution 2022-030). Since then, REV has been working to develop the project in advance of the 2026 contractual commercial operation date (COD). Earlier this year, REV came to CC Power requesting amendment of the ESSA's commercial terms under the premise that the project is no longer economic at the contracted price given increases in equipment costs and uncertainty related to tariffs on Chinese imports depending on the 2024 presidential election outcome. Since then, CC Power staff, consultants and member CCA staff have been analyzing and deliberating what is the best path forward, and under the direction of the CC Power Board of Directors, has negotiated an amendment with the counterparty. Note: CC Power retained a respected outside consultant firm to provide additional analysis of the developer's reasoning for the contract amendment request. The consultant confirmed the market conditions that are the basis for the amendment request.

Overview of Project

Project Name	Tumbleweed Energy Storage, LLC
Technology	Li-Ion Storage
Storage Capacity	75 MW / 600 MWh
Commercial Operation Date	6/1/2026
Developer	REV Renewables, a subsidiary of LS Power
Location	Kern County, CA

Summary

Staff are seeking Board approval of VCE’s continued participation in the Tumbleweed LDS contract under the terms of the Second Amendment to the ESSA, including 1) a 15-21% contract price increase that would be indexed to the import tariff rate on Chinese goods up to a cap, 2) removal of language that entitles CC Power to a share of the tax benefits from the project, 3) increase in the penalty rate if the project is unable to provide the expected amount of resource adequacy (RA) during the delivery term, and 4) opportunity to procure RA from the partially-built project for approximately a year and a half before of the contractual COD. This amendment was approved by the CC Power Board of Directors on August 21. Once the amendment is fully executed, the developer can secure supply in time for the batteries to be imported before any potential increases to the import tariff rate, which is currently 10.9% and could be increased to 60% or more. If batteries are successfully imported before the potential tariff increase goes into effect, the contract price increase would be at the low end of the range provided above.

The Tumbleweed project is the first project for CCAs to procure together through CC Power, and the first LDS project contract to be executed to meet the MTR procurement mandate. CC Power is actively negotiating another LDS project, which will satisfy the remaining MTR need and staff plans to bring that project to the CAC and Board in the future. In addition, Staff is continuously assessing other LDS opportunities as this type of resource diversifies VCE’s portfolio needs beyond regulatory compliance requirements.

Attachment

1. Second Amendment to Energy Storage Services Agreement (approval draft ESSA - redacted)
2. Resolution 2024-XXX

SECOND AMENDMENT TO ENERGY STORAGE SERVICE AGREEMENT

This SECOND AMENDMENT TO ENERGY STORAGE SERVICE AGREEMENT (“**Second Amendment**”) is entered into as of August [REDACTED], 2024 (“**Second Amendment Effective Date**”) by and between Tumbleweed Energy Storage, LLC, a Delaware limited liability company (“**Seller**”) and California Community Power, a California joint powers authority (“**Buyer**,” and, together with Seller, individually a “**Party**” and collectively, the “**Parties**”).

WHEREAS, the Parties entered into that certain Energy Storage Service Agreement, dated as of January 24, 2022 for the purchase and sale of Product from that certain 69MW/552MWh battery energy storage facility located in Kern County, California, as amended by that certain Amendment No. 1 to the Energy Storage Service Agreement, dated as of December 15, 2022 for the increase of the Guaranteed Capacity to 75MW/600MWh and to modify certain other terms (the “**Agreement**”); and

WHEREAS, the Parties desire to amend the Agreement as set forth in this Second Amendment.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants contained herein and other good and valuable consideration the adequacy and receipt of which are hereby acknowledged, do hereby agree as follows:

A. Capitalized Terms. Capitalized terms used and not defined in this Second Amendment shall have the meanings assigned to such terms in the Agreement.

B. Amendments to the Agreement.

1. The Cover Sheet is hereby amended by deleting the Contract Price in its entirety and replacing it with the following:

Contract Year	Contract Price
1 – 15	The sum of (i) the product of: (a) Applicable Tariff Rate expressed as a decimal, and (b) [REDACTED]; and (ii) [REDACTED], expressed in \$/kW-mo., with such Contract Price remaining flat after such calculation with no escalation and subject to adjustments in <u>Exhibit C</u> . For avoidance of doubt, the Contract Price shall not exceed [REDACTED].

2. Section 1.1 of the Agreement is hereby amended by adding the following new defined terms:

“**Applicable Tariff Rate**” means the lesser of (i) [REDACTED] and (ii) the Tariff Rate.

“**Date of Entry**” means the date(s) the batteries to be installed as part of the Facility enter the United States.

“**Second Amendment Effective Date**” means August [REDACTED], 2024.

“**Tariff Rate**” means the weighted average of all tariffs or duties (as assessed on the Date of Entry) on the utility scale batteries comprising the Facility with a Date of Entry after the Second Amendment Effective Date, including pursuant to Section 301 of the Trade Act of 1974 or that will be imposed as a result of the May 5, 2022 United States Trade Representative (USTR) statutory 4-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, and May 14, 2024 Presidential Memorandum for USTR. For the purposes of calculating the average of all such tariffs or duties, any such tariffs or duties assessed on any Facility batteries with a Date of Entry of April 1, 2025 or later, the percentage applied to the weighted average calculation is the lesser of (i) the actual assessed tariffs or duties on those batteries, and (ii) Ten and Nine Tenths Percent (10.9%). For the avoidance of doubt, the Tariff Rate as of the Second Amendment Effective Date is Ten and Nine Tenths Percent (10.9%). Seller shall provide Notice to Buyer of the Tariff Rate within ten (10) Business Days after each Date of Entry (or if the Tariff Rate is not available in such period, then as soon as reasonably practicable) along with documentation supporting the calculation of the Tariff Rate and other such documentation as reasonably requested by Buyer.

3. Section 3.5(b)(ii) of the Agreement is hereby amended by deleting the current provision in its entirety and replacing it with the following:

[REDACTED]

4. Exhibit C is hereby amended by deleting Section (d) in its entirety.

C. Other.

1. The provisions of this Second Amendment are severable, and if any one clause or provision is found to be invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Second Amendment.

2. Other than as expressly modified herein, the Agreement remains unchanged, and this Second Amendment shall not constitute a waiver of either Party's rights or obligations under the Agreement. Except as expressly set forth in this Second Amendment, the terms and conditions set forth in the Agreement shall remain in full force and effect, and from and after the Second Amendment Effective Date all references to the Agreement shall be deemed to be references to the Agreement as amended by this Second Amendment.

3. This Second Amendment shall be governed by and construed in accordance with laws of the State of California and shall be subject to the venue provisions of the Agreement.

4. No amendment, modification, waiver or discharge of this Second Amendment or of the Agreement (as amended), or any provision hereof (including, without limitation, this sentence) or thereof shall be valid or effective unless in writing and signed by the party against whom enforcement of such amendment, modification, waiver or discharge is sought and then only to the extent set forth in such writing.

5. This Second Amendment, together with the Agreement, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous negotiations, representations, understandings and agreements, whether written or oral, all of which are merged into the Agreement, as amended by this Second Amendment. In the event of a conflict between the Agreement and this Second Amendment, the terms of this Second Amendment shall control.

6. This Second Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one binding agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have entered into this Second Amendment as of the Second Amendment Effective Date.

**TUMBLEWEED ENERGY STORAGE,
LLC**

**CALIFORNIA COMMUNITY POWER, a
California joint powers authority**

By: _____
Name: _____
Title: _____

By: _____
Name: Alexander Morris
Title: General Manager

APPROVAL DRAFT

VALLEY CLEAN ENERGY ALLIANCE**RESOLUTION NO. 2024- _____****A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE
AFFIRMING THE CONTINUED PARTICIPATION IN THE TUMBLEWEED LONG DURATION
STORAGE PROJECT AND THE TERMS OF SECOND AMENDMENT TO THE ENERGY STORAGE
SERVICES AGREEMENT.**

WHEREAS, the Valley Clean Energy Alliance (“VCE”) was formed as a community choice aggregation agency (“CCA”) on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, VCE is a member of California Community Power (CC Power) joint powers authority; and

WHEREAS, VCE in coordination with CC Power conducted a request for offers for long duration storage (LDS) projects and engaged in negotiations for the Tumbleweed project; and

WHEREAS, CC Power executed agreements to effectuate its purchase of its storage resource from the Tumbleweed storage project based on the project’s desirable offering of products, pricing and terms; and

WHEREAS, the Tumbleweed project will contribute to the regulatory requirement to procure LDS for each of the CCAs that are participating in this project through CC Power by providing energy storage resources for a term of fifteen years starting on or about June 1, 2026; and

WHEREAS, on February 10, 2022 staff presented to the Board for its review the Energy Storage Services Agreement, Buyer Liability Pass Through Agreement and the Project Participation Share Agreement the Board approved authorization to participate; and

WHEREAS, the May 12, 2022 Resolution reaffirmed the Board’s February 10, 2022 action approving participation in the CC Power Tumbleweed project and authorizing its Executive Officer to execute Agreements and any ancillary documents associated with its action; and

WHEREAS, the November 10, 2022 Resolution reaffirmed the Tumbleweed project increased the overall size from 69 MW to 75 MW resulting in additional capacity for the participating CCAs which equates 0.25 MW for VCE.

WHEREAS, the second amendment addresses contracted price increase due to increases in equipment costs and uncertainty related to tariffs on imports depending on the 2024 presidential election outcome.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance affirms the following:

1. VCE's continued participation in the Tumbleweed Energy Storage Services Agreement under the terms of the Second Amendment.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lucas Frerichs, VCE Chair

Alisa M. Lembke, VCE Board Secretary