

Peak Rewards Program

These terms and conditions (“Agreement”) create an agreement between the City of San José, as administrator of San José Clean Energy (“SJCE”), and you, as a SJCE commercial customer (“Participant”). This Agreement shall govern Participant’s participation in SJCE’s Peak Rewards program (“Peak Rewards Program”). Participant, by clicking “I agree” at the bottom of this Agreement agrees to fully comply with the terms and conditions set forth in this Agreement until the expiration of the Term (as hereinafter defined).

Peak Rewards Program

The Peak Rewards Program is a load modifying program designed to reduce the overall electrical load within SJCE’s territory during specific periods of time, as designated by SJCE (individually, “Peak Event” or collectively, “Peak Events”). All Peak Events shall be determined by SJCE in accordance with SJCE’s sole and absolute discretion. Participant shall be eligible for incentives, as determined by SJCE in SJCE’s sole and absolute discretion, so long as Participant reduces its electrical energy consumption (“Electricity Consumption”) during Peak Events, in accordance with the terms set forth herein.

Term

This Agreement shall govern Participant’s participation in the Peak Rewards Program from the date of SJCE’s approval of Participant’s enrollment until the termination of Participant’s enrollment in the Peak Rewards Program, in accordance with this Agreement (“Term”).

Eligibility for the Peak Rewards Program

Participant hereby represents that it is eligible to enroll in the Peak Rewards Program and that Participant has met all the following eligibility requirements as set forth below:

- Participant is an existing non-residential SJCE customer;
- Participant has an active account served by SJCE (individually, “Account” or collectively, “Accounts”);
- Participant’s Account has a Pacific Gas and Electric Company (PG&E) SmartMeter™;
- Participant’s Account must not be enrolled in any other demand response program administered by another load-serving entity or third-party, e.g., PG&E; and
- Participant’s Account must be capable of reducing electric load by a minimum of one kilowatt during any given Peak Event.

Participant agrees that it shall maintain all eligibility requirements during the Term. Participant’s failure to maintain all eligibility requirements during the term shall result in the termination of Participant’s enrollment in the Peak Rewards Program and risk forfeiting any Rewards Credits earned. If, at any time during the Term, Participant fails to meet any of the above eligibility requirements, Participant shall deliver SJCE written notice by emailing SJCEBusinessRequests@sanjoseca.gov.

SJCE reserves the right to exclude any eligible SJCE customer from participating in the Peak Rewards Program, including any eligible SJCE customer having an Account with a delinquent balance. Eligibility requirements for the Peak Rewards Program may be subject to change, as determined by SJCE.

Enrolling in the Peak Rewards Program

Participant agrees to provide SJCE with all information necessary to properly enroll in the Peak Rewards Program, including by completing SJCE's online enrollment application that can be found at www.SanJoseCleanEnergy.org/peak-rewards/. Participant hereby represents and warrants that: (i) it has all necessary authorization to enroll in the Peak Rewards Program; (ii) that an authorized representative of Participant is accepting this Agreement on Participant's behalf; and (iii) all information provided to SJCE to determine Participant's eligibility to enroll in the Peak Rewards Program is true and accurate.

Participant acknowledges that enrollment in the Peak Rewards Program is limited and that SJCE, in its sole and absolute discretion, determines enrollment on a first-come-first-served basis.

Participant's enrollment in the Peak Rewards Program does not obligate Participant to reduce its Electricity Consumption during Peak Events. Participant acknowledges that participation in both the Peak Rewards Program and in efforts to reduce Electricity Consumption during Peak Events is entirely voluntary.

Rewards Credit

Participant shall earn financial credit on its SJCE electrical energy charges during Peak Events, so long as Participant reduces its Electricity Consumption in accordance with the terms set forth in this Agreement ("Rewards Credit").

The Electricity Consumption reduction from Participant's Baseline Energy Use will determine Participant's Rewards Credit earned. "Baseline Energy Use" is determined by SJCE, in accordance with SJCE's sole and absolute discretion, based on Participant's predicted Electricity Consumption during a Peak Event as if they had not participated in the Peak Event. After each Peak Event, SJCE will calculate Participant's Electricity Consumption reductions achieved during the Peak Event as compared to the customer's Baseline Energy Use. SJCE will multiply Participant's Electricity Consumption reduction by the applicable incentive amount, to determine the Participant's Rewards Credit.

SJCE may bundle Participant's Rewards Credit earned each month and issue the sum of Rewards Credit due to Participant in the form of a credit on the generation portion of Participant's SJCE electricity bill for Participant's Account or Accounts. Depending on billing cycles, it may take up to three months for the credit to be reflected on Participant's bill.

Rewards Credits vary depending on the characteristics of the Peak Event which, may be characterized as any of the following:

- Level 1 Event: \$0.50 per kilowatt-hour reduced;
- Level 2 Event: \$1.00 per kilowatt-hour reduced; and
- Level 3 Event: \$2.00 per kilowatt-hour reduced.

SJCE will apply the Rewards Credit to Participant's Account or Accounts and is not responsible for any misapplication of Rewards Credit that result from Participant miscommunicating the specific sites Participant sought to enroll.

Rewards Credit levels are subject to change or cancellation without notice and are subject to available program funds. However, once an event notification with a stated Rewards Credit amount is delivered to Participant, SJCE will guarantee Participant receives such Rewards Credit.

Notice of Peak Events

Peak Events may occur on any day between 4:00 p.m. PPT and 9:00 p.m. PPT from May 1, 2023, until the Peak Rewards Program is terminated by SJCE, which termination shall be in accordance with SJCE's sole and absolute discretion ("Program Period").

During the Program Period, SJCE intends to deliver notice, including text message, telephone, or email notice, to Participant to inform Participant of each Peak Event and Participant's ability to earn Rewards Credit by reducing its Electricity Consumption ("Notice").

Each Notice delivered by SJCE to Participant shall, at minimum:

- Clearly identify SJCE as the sender of the Notice;
- Clearly state the purpose for the Notice;
- Be delivered only during 8:00 a.m. PPT through 9:00 p.m. PPT; and
- For Notice delivered via email or text message, an opt-out function for Participant to opt out of future email or text message Notice shall be included.

The frequency at which SJCE intends to deliver Participant Notice of each Peak Event, whether via email, text message, or telephone, shall vary during the Program Period. To receive both email and text message Notice, Participant must provide SJCE with both a true and accurate email address and mobile telephone number. Failure to provide SJCE with such information may prevent SJCE from providing Participant with Notice of any Peak Event.

Email and Text Message Notice

Participant may receive Notice via email from SJCE@sanjoseca.gov. Participant may receive Notice via text messages from 1-833-415-2329.

Opting Out of Text Email or Text Message Notice

Participant may opt out at any time to stop receiving Notice via email related to the Peak Rewards Program by clicking the link provided in any Notice delivered via email or by emailing SJCE at SJCEBusinessRequests@sanjoseca.gov.

Participant may opt out at any time to stop receiving Notice via text message related to the Peak Rewards Program by replying STOP to any text message communications or by emailing SJCE at SJCEBusinessRequests@sanjoseca.gov.

Consent to Receive Email and Text Message Notice

By entering into this Agreement, Participant represents that it is the authorized user of any email address and mobile telephone number that it provides to SJCE related to Participant's enrollment in the Peak Rewards Program. Participant hereby authorizes SJCE, and any third-party contractor, subcontractor, or affiliate ("Contractor"), to deliver Participant Notice, via email and text message, at the email address and mobile telephone number Participant has provided to SJCE in connection with

Participant's enrollment in the Peak Rewards Program. Participant provides SJCE and any Contractor with its express written consent to receive email and text message Notice, in accordance with this Agreement, irrespective of Participant's email address or mobile telephone number being included on any state or federal "do not contact" list or on any similar list or registry that may otherwise impede SJCE's or any Contractor's ability to provide Participant with Notice.

Termination of Enrollment

Participant can terminate its enrollment in the Peak Rewards Program at any time by providing SJCE with 30 days' prior notice through SJCE's online unenrollment form that can be found at www.SanJoseCleanEnergy.org/peak-rewards/ ("Termination Notice"). Termination Notice contemplated hereunder shall be deemed to have been validly served, given, or delivered at the time indicated by the time stamp upon delivery, except that if received after 5:00 p.m. PPT, Termination Notice shall be deemed received on the next business day. Any validly delivered Termination Notice shall become effective within 30 days of SJCE's receipt of such notice.

Participant Covenants

In connection with this Agreement, Participant agrees that it shall not:

- Use the Peak Rewards Program for any unlawful purpose;
- Take any action that imposes or may impose (in SJCE's sole discretion) an unreasonable or disproportionately large load on our (or our third-party providers') infrastructure or that otherwise interferes with the proper working of the Peak Rewards Program;
- Infringe or violate the intellectual property rights or any other rights of SJCE, and its members, employees, and agents;
- Use the Peak Rewards Program in a manner that is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- Decompile, reverse engineer, or otherwise attempt to obtain the source code or underlying ideas or information of or relating to the Peak Rewards Program; or
- Utilize back-up generation resources, e.g., diesel generators or other polluting generators, to achieve reductions in Energy Consumption during Peak Events beyond what is permissible by law.

Violation of any of the foregoing covenants is grounds for termination of Participant's enrollment in the Peak Rewards Program or may alter Participant's ability to receive Rewards Credit earned.

Changes in Terms and Conditions

The terms, conditions, and provisions of this Agreement are subject to change as determined exclusively by SJCE, which determination shall be made in accordance with SJCE's sole and absolute discretion. Participants shall be notified, via email, of any updates to this Agreement. Any updates to this Agreement will also be available on the Peak Rewards Program website www.SanJoseCleanEnergy.org/peak-rewards/

SJCE encourages Participant to check this Agreement regularly for any updates or changes. Participant's acceptance of Notice delivered, via email or text message, after this Agreement has been updated and

posted to the Peak Rewards Program website serves as Participant's acceptance of the updated version of this Agreement.

Governing Law

California law governs the construction and performance of this Agreement.

Assignment

Participant has no right to assign any part of this Agreement without SJCE's prior written consent, which consent shall be withheld according to SJCE's sole and absolute discretion.

Disputes

Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.

Survival of Provisions

If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.

Headings

The section headings are for convenience only and are not to be used in its construction.

Entire Agreement

This Agreement is the final, complete, and exclusive understanding of the parties as to the matters contained herein. This Agreement supersedes all prior communications and understandings regarding such matters.

Limitation on Liability

Participant shall defend, indemnify and hold harmless SJCE and its officers, employees, and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following: (i) Participant's enrollment and participation in the Peak Rewards Program; and (ii) any breach of this Agreement.

For the avoidance of doubt, Participant acknowledges and agrees, to the maximum extent permissible by law, that: (i) Participant assumes full responsibility for any loss that results from Participant's enrollment and participation in the Peak Rewards Program; and (ii) SJCE shall not be liable for any indirect, punitive, special, or consequential damages, including any loss of data, profits, revenues, business opportunities, goodwill, or anticipated savings under any circumstances, even if such losses are based on negligence and regardless of whether SJCE terminates your enrollment or participation in the Peak Rewards Program.

Costs and Data Rates

There are no charges to Participant for enrolling or participating in the Peak Rewards Program. However, standard message and data rates may apply for any email or text message Notice delivered by SJCE to Participant. Such charges will be charged by Participant's mobile and/or internet service provider(s) and

paid by Participant. As such text message and email delivery are subject to Participant's mobile and/or internet service provider(s), access and delivery to any such Notice is not guaranteed.

Customer Privacy Policy

Please read San José Clean Energy's [Customer Confidentiality Policy](#) or call us at 833-432-2454.
