DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 26.30 OF TITLE 26 OF THE SAN JOSE MUNICIPAL CODE TO ADD SECTION 26.30.050 TO ESTABLISH THE ENERGY RELIABILITY FEE FOR LARGE ENERGY PROJECTS

WHEREAS, the City of San José ("City") established San José Clean Energy ("SJCE") as a community choice aggregator under Public Utilities Code Section 366.2 to provide San José residents and businesses local control over electricity sources and prices; and

WHEREAS, the growth of cloud computing, artificial intelligence, and digital services has increased demand for data centers and research and development facilities with a Power Demand of twenty (20) megawatts ("MW") or greater ("Large Energy Projects"), as those terms are defined in Sections 20.200.603 and 20.200.892 of the San José Municipal Code; and

WHEREAS, state law requires each load-serving entity, including SJCE, to procure, and to demonstrate to the California Public Utilities Commission ("CPUC") in advance that it has procured, sufficient generating capacity to serve its forecast customer demand plus a planning reserve margin ("Resource Adequacy") (Public Utilities Code Section 380); and

WHEREAS, the State's demand forecasts, on which SJCE's Resource Adequacy obligations are based, include the anticipated demand of Large Energy Projects; and

WHEREAS, SJCE would not incur these mandated Resource Adequacy costs but for the Large Energy Projects, and absent a fee, those costs would be borne by SJCE's existing residential and business customers; and

WHEREAS, it is a longstanding principle of California utility ratemaking that costs should be borne by those who cause them and not be shifted to other ratepayers; and

WHEREAS, in 2026, the Legislature enacted Assembly Bill 2383 (Zbur) and Senate Bill 886 (Padilla), which reflect the State's policy that the costs of serving data centers should be borne by data centers and not shifted onto other ratepayers, including by requiring electrical corporations and community choice aggregators to adopt tariffs or rules governing interconnection of, and retail electric service to, data centers; and

WHEREAS, consistent with that policy, the CPUC is considering Pacific Gas and Electric Company's Electric Rule 30 (Application A.24-11-007), which would make large-load customers responsible for the costs and risks of the transmission-level infrastructure needed to serve them; and

WHEREAS, consistent with these laws and policies, the City desires to recover from Large Energy Projects, through a cost recovery fee, the reasonable costs of SJCE's incremental Resource Adequacy obligations attributable to their anticipated demand, so that those costs are not shifted to SJCE's other customers; and

WHEREAS, City staff prepared the Energy Reliability Fee Analysis dated November 2026 ("Fee Analysis"), which quantifies those costs and supports an Energy Reliability Fee of up to $50,101 per megawatt of Power Demand for Large Energy Projects; and

WHEREAS, based on the Fee Analysis, the Energy Reliability Fee does not exceed the reasonable costs of the Resource Adequacy obligations attributable to Large Energy Projects, and allocating those costs based on each project's Power Demand bears a fair or reasonable relationship to each project's burden on SJCE's Resource Adequacy obligations, and the fee is therefore not a tax under Article XIII C of the California Constitution; and

WHEREAS, the City Council has considered the entire administrative record for this Ordinance, including the staff report, the Fee Analysis, and all written and oral public comment received before and at the public hearing; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, independently and in the alternative, approval of this Ordinance is exempt from CEQA under:

(a) CEQA Guidelines Section 15061(b)(3) (common sense exemption), because it can be seen with certainty that there is no possibility that the Ordinance and related actions may have a significant effect on the environment;

(b) CEQA Guidelines Section 15307 (Class 7, Actions by Regulatory Agencies for Protection of Natural Resources), because the Ordinance and related actions establish standards to protect water supply and water quality; and

(c) CEQA Guidelines Section 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment), because the Ordinance and related actions establish standards to protect air quality, reduce noise, and limit energy and water use, and does not relax any existing environmental standard; and none of the exceptions in CEQA Guidelines Section 15300.2 applies; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 26.30 of Title 26 of the San José Municipal Code is amended to add Section 26.30.050 to read as follows:

26.30.050 Energy Reliability Fee.

A. Fee. Each Large Energy Project, as defined in San José Municipal Code Section 20.200.603, shall pay an Energy Reliability Fee, calculated per megawatt of Power Demand, as defined in San José Municipal Code Section 20.200.892 in the amount set by resolution of the City Council. The Energy Reliability Fee shall be adjusted annually on January 1 of every year based on the then-current CPUC Resource Adequacy Market Price Benchmark.

B. Applicability. The Energy Reliability Fee applies to each Large Energy Project, including an amendment, modification, expansion, or change of use of a Large Energy Project, for which a planning permit or permit amendment is approved under Chapter 20.100 of Title 20 on or after the effective date of this Chapter. The conditions of approval of the planning permit or permit amendment shall state, in accordance with City Council Policy, whether the fee applies to the project's entire Power Demand or only to its incremental Power Demand.

C. **Payment.** The Energy Reliability Fee shall be paid in two installments. (1) Fifty percent (50%) of the Energy Reliability Fee is paid as a condition precedent to the issuance of the first building permit for the Large Energy Project; and (2) fifty percent (50%) as a condition precedent to the first temporary certificate of occupancy, or if no temporary certificate of occupancy is issued, prior to any occupancy.

D. **Eligible Use of Fee Revenue.** Fee revenue shall be deposited in an account and used only for expenditures that supply Resource Adequacy toward, or reduce, SJCE's CPUC-mandated Resource Adequacy obligations attributable to Large Energy Projects, and for the reasonable costs of administering the fee. Eligible expenditures include, but are not limited to, the installation of distributed energy resources at homes and businesses to reduce demand, power purchase agreements, Resource Adequacy tolling agreements, bilateral capacity contracts, and reimbursement of Resource Adequacy costs SJCE has incurred for the anticipated demand for Large Energy Projects.

SECTION 2. This ordinance shall become effective February 14, 2027.

PASSED FOR PUBLICATION of title this _____ day of _____, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk

Energy Reliability Fee Analysis

November 2026

This study proposes a one-time Energy Reliability Fee of approximately $50,000 per megawatt of electrical utility service request levied on Large Energy Projects seeking development permits in the City of San José. This Energy Reliability Fee is not a development impact fee under the Mitigation Fee Act but is a cost recovery mechanism. The fee recovers approximately $88 million in Resource Adequacy and related administrative costs that San José Clean Energy incurs for forecast large load from 2027 through 2031.

Prepared by:
City of San José

INTRODUCTION

Large Energy Projects are buildings or facilities with electrical utility service requests of 20 megawatts or more.[1] Examples include research and development centers, labs, advanced manufacturing facilities, EV charging hubs, and other similar uses. As the Community Choice Aggregator for San José, San José Clean Energy (SJCE) serves as the default electric generation service provider for homes and businesses, including Large Energy Projects.[2] SJCE must buy Resource Adequacy (RA) capacity for large loads that the State of California forecasts in its Integrated Energy Policy Report (IEPR) but SJCE does not yet serve. This fee recovers that cost from the projects that create it, rather than from existing SJCE customers.

Every load-serving entity in California must show the California Public Utilities Commission (CPUC) that it has contracted enough generating capacity each month to meet its customers' forecast peak demand plus a reserve margin. That contracted capacity is RA, and it is what keeps enough supply on the grid to prevent outages. RA most commonly comes from contracts with gas-fired power plants. It may also come bundled in long-term power purchase agreements with solar, wind, and battery projects. Increasingly, customer-sited distributed energy resources can be controlled by a load-serving entity to reduce peak demand, thus reducing its regulatory RA obligation.

This fee serves to prevent existing customers from paying for capacity needed to serve new large loads reliably. SJCE does not provide distribution services, so its capacity costs are RA rather than substations and lines. Those costs are incurred by SJCE when load associated with Large Energy Projects enters the state forecast, often years before the facility is energized and would be able to defray those costs through paying its share of SJCE rates.

BACKGROUND

Current Resource Adequacy Allocation

SJCE will spend about $100 million on RA in calendar year 2026. The CPUC has already assigned SJCE's 2027 obligations, which are 4%-33% higher than 2026, depending on the month[3].

[1] Pending anticipated updates to definitions set forth in Chapter 20.200 of the San José Municipal Code.
[2] Pacific Gas & Electric Company (PG&E) is the distribution provider for all San José homes and businesses, delivering the electricity SJCE procures to their shared customers over its system of poles and wires.
[3] Specific Community Choice Aggregator RA procurement requirements, including year-ahead and month-ahead system, local, and flexible resource adequacy obligations, together with the load forecast data from which those obligations are derived, is market-sensitive and confidential within the meaning of Public Utilities Code section 454.5(g), further applied by CPUC decisions D.20-07-005 and D.06-06-066.

How RA Obligations Are Set

The California Energy Commission (CEC) adopts a statewide energy demand forecast through its IEPR process. The long-term forecast is updated annually and currently extends until 2045. The CPUC uses that forecast to set the total system RA need used to inform each load-serving entity's assigned monthly RA obligation for the coming year.

Under the CPUC's slice-of-day framework for RA, SJCE must show capacity for every hour of each month's representative peak day, plus a planning reserve margin of 18% for 2026 and 2027[4]. A load-serving entity that falls short faces steep CPUC penalties and can be charged for backstop capacity the California Independent System Operator (CAISO) procures.

SJCE meets its obligation through its long-term power purchase agreements for renewable energy and storage resources and bilateral capacity contracts with generators.

How New Load Is Addressed Today

Today, SJCE recovers the RA cost of new load only after that load is energized and billed. The RA cost of forecast load that arrives late, or never arrives, falls on existing customers.

- **Enrollment:** New accounts in San José are enrolled in SJCE by default. A new Large Energy Project becomes an SJCE customer unless it opts out to PG&E bundled service or, within the statewide cap, to direct access.
- **Connection:** PG&E connects the facility and charges the developer for line extensions, substations, and transmission-level service under PG&E tariffs, such as Electric Rule 30. Those charges cover wires, not generation capacity costs.
- **Capacity:** SJCE has no upfront charge for new load. When the IEPR adds load, SJCE's obligation as assigned by the CPUC rises, SJCE must buy the RA, and generation rates paid by all customers recover the cost.
- **Gap:** A Large Energy Project starts paying for RA only once it is energized and billable by SJCE. With 55.4% of SJCE's 2027 load growth in the IEPR coming from these projects, the cost being carried by existing customers is material.

FEE ANALYSIS

Large Energy Project development accounts for an estimated $88 million of SJCE RA cost from 2027 through 2031, or about $50,000 per MW of electrical utility service request for projects in the pipeline. The analysis has three parts:

1. Projected RA obligation attributable to Large Energy Projects;
2. Pending Large Energy Projects demand driving that obligation; and

[4] The planning reserve margin has not been finalized for years after 2027.

3. Average cost per MW.

Projected RA Obligation Attributable to Large Loads

The CEC 2025 IEPR baseline forecasts SJCE load growth of 5.6% in 2027 and attributes 55.4% of that growth to the IEPR's data center category[5]. This analysis assigns the same 55.4% share of each month's obligation increase (Table 1) to new Large Energy Project development:

$$RA^{LL}{}_{2027,m} = f_{LL} \times (RA_{2027,m} - RA_{2026,m})$$

The Large Energy Project share in 2027 ranges from 9.1 MW in the lowest month to 70.0 MW in the highest. At current estimates of $20.15 per kilowatt-month (kW-month),[6] that is $0.18 million to $1.41 million per month. The 2027 total then is between $2.2 million (every month at the minimum) and $16.9 million (every month at the maximum).

RA obligations for 2028-2031 are not yet assigned; the RA obligation for a given year is finalized in September of the previous year. The analysis holds the 2027 ratio of obligation increase to load growth constant, then scales it by each year's forecast load growth, the large load share, and the ratio of peak demand growth to load growth for PG&E's Greater Bay Area. Increased RA obligation is assumed to correlate with increased SJCE demand:

$$RA^{LL}{}_{t,m} = r_m \cdot \Delta L_t \cdot f_{LL} \cdot \rho$$

- r_m = 2027 obligation increase in month m divided by 2027 SJCE load growth
- ΔL_t = SJCE year-over-year load growth in year t (IEPR baseline)
- f_{LL} = share of SJCE load growth attributable to Large Energy Projects (IEPR baseline)
- ρ = ratio of peak demand growth to load growth (PG&E Greater Bay Area, IEPR baseline)

Table 1. SJCE RA Cost Attributable to Large Energy Projects[7], 2027–2031

Year	SJCE load growth	Large Energy Project share	Ratio of demand growth to load growth	Cost ($ millions)
2027	5.6%	55.4%	54.3%	9.133

[5] https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report-iepr/2025-integrated-energy-policy-report

[6] $20.15 per kW-month is the average of the system RA market price benchmark values for 2025-2027. The System RA market price benchmark is an annual CPUC-set estimate of what system-level resource adequacy capacity is worth on the market (in $/kW-month), used mainly in the Power Charge Indifference Adjustment (PCIA) to credit the capacity value of a utility's legacy generation contracts against their above-market costs.

[7] The CEC defines data centers as ",,,buildings designed and equipped to meet the needs of high-density computing equipment, such as server racks, used for data storage and processing." This definition is aligned with that of Large Energy Projects. https://www.energy.ca.gov/programs-and-topics/topics/data-centers

Year	SJCE load growth	Large Energy Project share	Ratio of demand growth to load growth	Cost ($ millions)
2028	17.7%	87.3%	45.0%	20.422
2029	18.8%	88.1%	48.5%	23.651
2030	15.5%	88.7%	47.0%	18.930
2031	11.1%	87.6%	45.7%	13.043
Total				**85.179**

Sources: CPUC 2027 RA allocation; CEC 2025 IEPR; CPUC MPB 2025–2027; SJCE.

Pending Large Energy Project Demand

The increase in SJCE's obligation comes mostly from Large Energy Projects that have requested service but are not yet energized. The IEPR attributes 55.4% of SJCE's 2027 load growth to them; the remaining 44.6% comes from other sources that are not charged the proposed fee. Other sources of load growth include economic development, vehicle electrification, and to a lesser extent, building electrification. The CEC forecasts data center demand from energization requests reported by seven utilities, reducing each project's requested capacity to 67% of its nameplate, then applying a confidence factor based on its interconnection status (i.e., signed agreement, active application, or inquiry). A project counts toward SJCE's forecast in the IEPR once PG&E reports it, typically at least five years before the project is energized. That timing is why SJCE is required to pay for this capacity ahead of collecting any corresponding rate-revenue from the projects, and why delayed or stalled projects leave costs behind for other ratepayers to pay.

The City's Large Energy Project pipeline totals 1,766 MW of electrical utility service request across 13 projects as of October 20, 2026. The City has an interdepartmental team tracking the status of Large Energy Projects and maintains a webpage showing the status of projects that have applied for a permit[8].

Average Cost per MW

The analysis estimates capacity at $20.15 per kW-month ($20,150 per MW-month), the 2025-2027 average of the CPUC Market Price Benchmark for RA,[9] which the CPUC sets each year. Dividing the attributable cost by pipeline electrical utility service request gives the average cost per MW (Table 2). The analysis assumes three full-time employees will be needed to administer the fee over the next five years. This is based on SJCE's experience procuring customer-sited distributed energy resources and effort

[8] https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/data-center-and-other-large-energy-projects
[9] Source: https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/power-charge-indifference-adjustment

required for performance verification and regulatory compliance for the RA program. The proposed fee is approximately $50,000 per MW of electrical utility service request. The per-MW cost is a reasonable proxy for what each future project will cause once it enters the forecast.

Table 2. Average Cost per MW*

Cost component	Cost attributable to large loads	MW assigned	Average cost per MW
RA capacity, 2027-2031	$85.179 million	1,766	$48,233
Fee administration	$3.3 million	1,766	$1,869
Total	**$88.479 million**	**1,766**	**$50,101**

**Components may not sum to the total due to rounding.*

Proposed Fee Structure

The fee applies per MW of electrical utility service request to new and expanded large loads in San José that meet the applicability requirements below. Half is due upon issuance of the building permit (when there is certainty that the allocation of forecast is attributable to the applicable project) and half upon the earlier of issuance of a temporary or final certificate of occupancy.

Table 3. Proposed Fees by Project Size

Project electrical utility service request (MW)	Total fee	Due upon building permit (50%)	Due upon certificate of occupancy (50%)
49	$2,454,949.00	$1,227,474.50	$1,227,474.50
99	$4,959,999.00	$2,479,999.50	$2,479,999.50

Project sizes are illustrative. Fee calculated at $50,101 per MW of electrical utility service request.

Applicability

Covered Large Energy Projects would conform with the applicability of City of San José's proposed Data Center and Large Energy Project Uniform Standards. The Energy Reliability Fee would apply to both categories:

- **Large Load (20 Megawatts or greater) Data Centers:** Through the proposed Data Center and Large Energy Project Uniform Standards, the City of San José proposes to amend the definition of Data Center in the San José Municipal Code to include Large Load Data Center Facility, which is a facility with a Power Demand of twenty (20) megawatts or greater that is used primarily to house networked computer servers for the remote storage, remote computing, or

distribution of data, and that is not a Large Load Research and Development Facility. This includes any such facility with backup generation capacity, excluding battery energy storage systems, greater than forty percent (40%) of its Power Demand. Examples include cloud services, storing customer data, providing internet services, or operating as enterprise computing infrastructure Large Load (20 Megawatts or greater)

- **Research and Development Facility:** Through the proposed Data Center and Large Energy Project Uniform Standards, the City of San José proposes to amend the definition of Research and Development in the San José Municipal Code to include Large Load Research and Development Facility, which is a facility with a Power Demand of twenty (20) megawatts or more housing networked computer servers that: (a) support the owner's or operator's own industrial, research, design, engineering, or product development activities, such as chip design, hardware development, and prototype testing, and are not used to sell computing, storage, or data services to others; and (b) have backup generation capacity, excluding battery energy storage systems, of forty percent (40%) or less of the facility's Power Demand.

If the proposed Data Center and Large Energy Project Uniform Standards are adopted by the City Council, Large Energy Projects falling under the categories above that have already received approval on their planning application would be exempt.

The fee basis is MW of electrical utility service request, meaning the maximum demand in the project's PG&E service application or service agreement. This figure is known at permitting, can be verified, and matches how the pipeline is measured.

Treatment If a Large Energy Project Opts Out of SJCE Service

The fee is retained if a Large Energy Project opts out of SJCE service. The fee pays for RA that SJCE buys based on a project's anticipated demand, as determined by the CPUC. The CPUC assigns obligations a year ahead from the forecast, and SJCE contracts for that capacity in advance, so the cost is incurred whether or not the facility later takes SJCE service.

Relationship to SJCE Generation Rates

The fee is one-time and is meant to cover RA costs incurred ***before*** the large load is energized and billed. Once energized, the Large Energy Project would pay standard SJCE generation rates, which would then recover that Large Energy Project's RA cost going forward. The fee does not replace or discount those later charged rates.

Use of Funds

The Energy Reliability Fee revenue ensures that existing customers do not bear forward costs incurred to serve Large Energy Projects. Fee revenue will fund bilateral capacity contracts, distributed energy resources (DERs) at homes and businesses, and other

types of measures and products to improve reliability and fulfill SJCE's RA procurement obligations incurred directly due to Large Energy Projects.

How Funded Measures Meet the Large Load RA Requirement

Every funded measure must either supply RA toward SJCE's requirement or reduce that requirement's impact on existing customers. Measures that do neither are not eligible.

- **Supply RA:** Aggregated DERs registered with CAISO as a resource count in SJCE's RA showings. Each qualifying MW replaces a MW SJCE would otherwise be required to buy for large load.
- **Reduce the requirement:** Measures that lower SJCE customers' demand in peak hours reduce SJCE's measured peak demand. Future CEC forecasts and CPUC allocations then reflect a lower obligation.
- **Make whole:** Reimbursement to SJCE pays for RA already bought for large load that has not arrived. It does not add capacity, but it keeps that cost off existing customers' rates.

Table 4. Example Eligible Measures and How Each Meets the Requirement

Measure	Pathway
Batteries at homes and businesses, with or without solar	Supplies RA
Smart thermostats	Reduces requirement, or supplies RA as demand response
Vehicle-to-grid charging	Supplies RA
Rooftop solar	Supplies RA only when paired with battery storage
Heat pumps	Reduces requirement only through controls or if battery-integrated
Other capacity, such as storage contracts or RA contracts	Supplies RA

FOLLOW UP

SJCE will report each year to the City Council as part of the San José Clean Energy Annual Report to Council Pursuant to San José Municipal Code 26.50.020(B):

- the Energy Reliability Fees collected in the previous calendar year; and
- the number and type of distributed energy resources funded; and
- the amount, if any, of Energy Reliability Fees used to fund bilateral capacity contracts.

The Fee Analysis will be updated annually, to incorporate changes in the Market Price Benchmark and in the Large Energy Project pipeline (as determined by the CPUC), as part of the City's annual update to the Schedule of Fees & Charges. The first update will be part of the fiscal year 2028-2029 budget process.