



Weekly Management Report

August 27, 2021

- 1. Memo** Solutions for Stevenson
Elementary Drop-Off
Community Development Department

- 2. Synopsis** Cultural Arts Commission Meeting
on August 12, 2021
Parks and Recreation Department

- 3. Minutes** Civil Service Board Meeting
on August 4, 2021
Management Services Department

- 4. Memo** Property Assessed Clean Energy
(PACE) Programs
Water & Power Department

- 5. Minutes** Burbank Water & Power Board
Meeting on August 5, 2021
Water & Power Department

- 6. Report** July 2021 Operating Results
Water & Power Department


MEMORANDUM



COMMUNITY DEVELOPMENT

DATE: August 12, 2021

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director 
BY: David Kriske, Assistant Community Development Director

SUBJECT: City Manager Tracking List Item #1919 – Solutions for Stevenson Elementary Drop-off

At the September 13, 2016 City Council meeting, City Council gave direction to work with the Burbank Unified School District to improve issues related to student drop-offs at Stevenson Elementary School. This direction was given as part of City Council's approval of the Alameda North Neighborhood Protection Plan that occurred at this meeting. The purpose for analyzing site access around Stevenson Elementary was because the approval and implementation of the Alameda North Neighborhood Protection Plan identified secondary drop-off issues for the school.

As a result of this direction, in 2018 staff conducted internal analysis of potential student drop-off alternatives to improve safety and efficiency of morning and afternoon drop-offs. This included preparation of a small study that identified seven possible drop-off modifications. The alternatives ranged from low to high cost, and low to high impact on the surrounding community. More low-impact alternatives included modification or relocation of the curbside drop-off zone, while higher-cost alternatives included providing on-site drop-off and parking areas on school property or on an adjacent power line easement. The internal staff analysis of these alternatives presented a range of options and a relative assessment of cost and complexity, but did not include conceptual drawings or cost estimates.

Subsequent to this school-specific analysis, the City completed two related school safety initiatives that related to the specific concerns of Stevenson Elementary. First, in 2019 and 2020 the City completed a grant-funded Safe Routes to School capital project that installed curb extensions, crossing improvements, and all-way stop signs around

Washington, Jefferson, and Muir schools. This project included design and outreach activities to assist the City in identifying and improving access to these three elementary schools. In addition to the work at these three schools, the City Council approved a policy to install 15 m.p.h. school speed zones around all schools in Burbank, and approved updated all-way stop sign criteria to install all-way stops around the intersections of every school in the City. Second, in 2020, the City Council approved the Citywide Complete Streets Plan which addresses pedestrian, bicyclist, transit, and motorist safety throughout the City. This plan included a Citywide Safe Routes to School Plan short-term priority project (Attachment 1) to conduct a safe routes to school site assessment around every school to identify safety and circulation improvements similar to the analysis conducted for Stevenson Elementary. Also in 2020, Staff applied for an Active Transportation Program grant fund to implement the Citywide Safe Routes to School Project, but unfortunately did not receive funding. Nonetheless, improving safe routes to school safety remains a priority of the Complete Streets Plan.

Based on the Stevenson Elementary Analysis, development of the Safe Routes to School capital project, and adoption of the Complete Streets Plan, staff recommends the City continue to pursue funding for the Citywide Safe Routes to School Plan which would provide detailed analysis of all the schools in Burbank as well as incorporate school district and community outreach in these school site analyses. Pursuit of project funding should be incorporated into the City's implementation of the Complete Streets Plan, which is currently ongoing with implementation of three early-action projects identified by the City Council in 2020.

Attachments

Citywide Complete Streets Plan Short Term Priority Project - Safe Routes to School Plan

SHORT-TERM PRIORITY PROJECT CITYWIDE SAFE ROUTES TO SCHOOL PLAN

PROJECT LOCATION:

All 27 schools Citywide.

PROJECT DESCRIPTION:

- Conduct site assessments at every school in the City and create conceptual plans for traffic safety improvements.
- Create an implementation plan for future grant funding opportunities or to be installed gradually over time.

PURPOSE:

- Expand upon City's local all-way stop and 15 mph school speed zone criteria to reinforce school traffic safety and to calm traffic.

Priority Eligibility:

- Priority networks: **Pedestrian, Transit, Bicyclist, Motorist**
- Within focus areas: **Yes**

Average Annual Collisions within a quarter mile (June 2013 - June 2018):

- Total collisions: **386.6 per year** (citywide average: 1,302.4 per year)
- Pedestrian collisions: **23 per year** (citywide average: 61.4 per year)
- Bicyclist collisions: **17.4 per year** (citywide average: 53.2 per year)
- Motorist-only collisions: **342.6 per year** (citywide average: 1,175.2 per year)
- Total collision severity: 27 of 1933 collisions (**1%**) resulted in KSI incidents
- Pedestrian collisions severity: 10 of 115 collisions (**9%**) resulted in KSI incidents
- Bicyclist collision severity: 4 of 87 collisions (**5%**) resulted in KSI incidents
- Motorist-only collision severity: 13 of 1,713 collisions (**0.7%**) resulted in KSI incidents

Socio-Economic Indicators:

- CallEnviroScreen 3.0 Percentile Scores: varies from **25-30%** to **90-95%**

Planning-Level Rough-Order-of-Magnitude (ROM) Cost Estimate: \$100K

Annual Operations and Maintenance (O&M) Cost Estimate: N/A



**CITY OF BURBANK
CULTURAL ARTS COMMISSION - ANNOTATED AGENDA/MEETING SUMMARY**

Meeting: Burbank Cultural Arts Commission Date: August 12, 2021
 Members Present: Leah Harrison, Eric Conner, Cynthia Pease, Rajasri Malikarjuna, Katherine Zoraster, Suzanne Weerts, Lucy Simonyan, Jackie Brenneman, Stefanie Girard
 Members Absent:
 Staff Present: Erin Barrows, Noah Altman, Doug Fowler, Caroline Arrechea
 Liaisons: Jess Talamantes

Item Discussed	Summary	Direction or Action, if any
1. Election of Officers	After discussion, the Commission decided to re-elect their current Officers, Leah Harrison as Chair and Eric Conner as Vice-Chair.	Motion made by Ms. Pease, seconded by Ms. Weerts and passed 7-0 to re-elect Ms. Harrison as Chair and Mr. Conner as Vice-Chair (Ms. Harrison and Ms. Malikarjuna abstained).
2. Brown Act and Attendance Policy Review	Staff reviewed the Brown Act and the attendance policy requirements.	
3. 2021/22 Goals and Objectives Meeting Discussion (Part 1)	The Commission briefly discussed their sub-committee's goals and objectives. They also agreed to temporarily add Ms. Harrison and Ms. Girard as part of the Beautification Committee to fill vacancies left by the previous members.	Motion made by Mr. Conner, seconded by Ms. Simonyan and passed 7-0 to temporarily add Ms. Harrison and Ms. Girard as part of the Beautification Committee (Ms. Harrison and Ms. Malikarjuna abstained).
4. Cultural Arts Funding Update	Staff gave a brief update on the research they have been doing regarding funding options, including developing an arts grant program. They explained that there would be a future discussion on how and where funds would be allocated, as well as timelines.	
5. Art in Public Places Update	Staff reported that the APP Committee received an update regarding the art pieces at the Burbank Empire Center (2300 Empire Avenue) project. In addition, the Verdugo Aquatic Facility Public Art Project Professional Services Agreement was unanimously approved by City Council on June 22, and the tentative completion date for the project is February 2022.	
The Cultural Arts Commission subcommittees provided updates on their goals: Goal 1: EVENTS Goal 2: BURBANK ARTS BEAUTIFICATION Goal3: MARKETING AND COMMUNICATIONS Goal 4: COMMUNITY ENGAGEMENT	GOAL 1: The sub-committee is working on the possibility of video projections and working with Magnolia Park representatives on future night-out events. GOAL 2: All ten Beautification boxes have been sponsored. The Committee will also be discussing ways to memorialize the teens who recently died in a car racing accident. GOAL 3: The members continue to work on the ongoing goal of having a social media presence, and spotlighting artists, events and the Beautification box program. GOAL 4: The members continue to engage the community and raise awareness of the Commission's mission, and are meeting with the Chamber, MyBurbank, the Library and others. The are working to help support local arts organizations in addition to publicizing their events.	

August 4, 2021
4:30 p.m.

The regular meeting of the Civil Service Board was held by video conference/teleconference on the above date.

Roll Call

Members present: Linda Barnes, Chairperson
Jacqueline Waltman, Secretary
Matthew Doyle
Richard Ramos

Members not present: Iveta Ovsepyan, Vice - Chairperson

Also present: Nareg Garabedian, Administrative Analyst I
Brady Griffin, Human Resources Manager
Mark Hatch, BFFCOU President
David Lasher, Administrative Analyst II
Betsy McClinton, Management Services Director
Jina Oh, Senior Assistant City Attorney
April Rios, Human Resources Manager
Rene Sanchez, Human Resources Technician II
Jessica Sandoval, Executive Assistant
Julianne Venturo, Ast Management Services Director

Future Agenda Items

None

Open Public Comment Period of Oral Communications

None

Election of Officers

MOTION CARRIED: It was moved by Mr. Doyle, seconded by Ms. Waltman and carried 3-0 to appoint Mr. Ramos as Secretary. It was moved by Mr. Doyle, seconded by Ms. Waltman and carried 3-0 to appoint Ms. Waltman as Vice-Chairperson. It was moved by Mr. Doyle, seconded by Ms. Barnes and carried 3-0 to appoint Ms. Ovsepyan as Chairperson.

Approval of Minutes

MOTION CARRIED: It was moved by Ms. Waltman, seconded by Mr. Doyle and carried 3-0 to approve the minutes of the regular meeting of July 7, 2021.

Proposed Amendments to Classification Plan

None

Recruitment and Selection Report – July 2021

RECOMMENDATION: Note and file.

Appointments and Assignments

For the month of August 2021, there was one temporary assignment extension. The extension was being sought on behalf of the Public Works Department.

MOTION CARRIED: It was moved by Ms. Waltman, seconded by Mr. Doyle and carried 4-0 to approve the Appointments and Assignments for the month August 2021.

Adjournment

The regular meeting of the Civil Service Board was adjourned at 4:55 p.m.

Julianne Venturo
Assistant Management Services Director

APPROVED:

Iveta Ovsepyan, Chairperson

DATE _____

Richard Ramos, Secretary

DATE _____

MEMORANDUM



**WATER AND
POWER**



DATE: August 25, 2021

TO: Dawn Roth Lindell, General Manager

FROM: Dan Tunnicliff, Assistant General Manager, Customer Service & Marketing

SUBJECT: PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

BACKGROUND

Property Assessed Clean Energy (PACE) programs are designed to facilitate financing renewable energy, energy efficiency, and other eligible improvement projects for privately owned residential and commercial properties. PACE was enabled by Assembly Bill 811 (AB811) which extended the provisions of the Streets and Highways Code to allow cities and counties to create a benefit assessment district in which property owners may secure financing for certain efficiency improvements and renewable energy projects and repay the loan through an assessment on their property tax bill. The loan is essentially treated as a lien on the property and hence the obligation stays with the property, rather than with the individual.

PACE programs have been touted as a tool to generate green jobs and economic activity at the local level while helping to achieve public policy goals of carbon reduction and other environmental impact improvements. PACE would facilitate overcoming two primary barriers to widespread installations of promoted systems: large upfront costs and lack of available financing.

This type of land-secured financing has been used by cities and counties for a long time to fund improvements on streets, sewer, and utility systems. The difference with this approach is that individual customers would voluntarily participate rather than being required to participate as is typical of other assessment districts.

Federal Housing Financing Agency Challenge to Residential PACE

Residential PACE programs have been scrutinized and questioned by the Federal Housing Financing Agency (FHFA). Since July 2010, The FHFA has voiced concern that residential PACE assessments have a lien status superior to that of existing mortgages underwritten by Fannie Mae and Freddie Mac. Accordingly, in August 2010, Fannie Mae and Freddie Mac announced that they would not purchase loans that were secured by properties encumbered by PACE obligations.

Nothing in the FHFA statements since July 2010 challenged the validity of PACE Assessments as a valid special assessment. Nonetheless, the FHFA's position makes sales of properties subject to PACE Assessments or refinancing mortgages on such properties more difficult.

ANALYSIS

Consumer Concerns and Lawsuits

Several concerns have been raised over the years regarding PACE-related consumer protections. Homeowners have sought legal assistance for PACE-related problems and foreclosures due to alleged fraud, abusive contractor practices, and unsustainable loans. In essence, some borrowers of PACE loans believed they signed up for loans they neither understood nor could afford.

The National Consumer Law Center (NCLC), a non-profit focusing on consumer law and energy policy summarizes the lack of consumer protections in PACE loans in its article "What is a Property Assessed Clean Energy (PACE) Loan?".¹ See Attachment 1 for the full article. NCLC listed their concerns with PACE loans as follows:

- Underwriting does not check whether borrowers can afford the loan; there is no guarantee that energy savings will pay for the improvements.
- No clear remedies for injured homeowners.
- Offered to low-income homeowners who are eligible for free energy efficiency improvements through the federal Weatherization Assistance Program or other lower cost options, but no requirement to tell homeowners about these free or low-cost options.
- Nonpayment risks tax foreclosure and default on the homeowner's traditional mortgage.
- Taking on a PACE lien may violate existing mortgages (even if payments are made) and may cause problems when selling or refinancing the house.
- PACE liens may not be covered by the Truth In Lending Act (TILA) or Real Estate Settlement Procedures Act (RESPA), which provide:
 - Ability-to-repay requirements.

¹National Consumer Law Center, 2016, accessed August 23, 2021, https://www.nclc.org/images/pdf/energy_utility_telecom/pace/what-is-pace-loan.pdf

- 3-day advance review of documents with the right to cancel.
- Ban on kickbacks; rules for broker compensation to avoid conflicts of interest.
- Extra protections for high-cost loans.
- Enforceable remedies for violations and a ban on forced arbitration clauses (which significantly reduce a consumer's legal options and rights).
- Marketed through door-to-door sales and telemarketers, posing a high risk of deceptive sales tactics and other home-improvement contractor abuses.
- No protections against upselling other products; less assurance of energy savings than through the federal Weatherization Assistance Program.
- Fannie Mae and Freddie Mac will not purchase loans on properties with PACE liens so it can be hard to refinance or sell those properties.

Consumer Protections

In response, various consumer protection regulations have been enacted in California over the years since PACE first appeared in 2013-2014 including Assembly Bill 2693 (Dababneh), Chapter 618.

The most recent and far-reaching legislation has been Senate Bill 242 (the Skinner Bill) and Assembly Bill 1284.

The Skinner Bill was signed into law in October 2017 and established the following:

- A recorded confirmation of terms require 100% of applicants to confirm the homeowner understands the terms and conditions of their PACE assessment.
- Restricts PACE originators from paying compensation to the contractor beyond the cost of the project.
- Prevents PACE originators from advising a contractor of the maximum amount of PACE financing a property owner is eligible for.
- Requires PACE originators to report data to local governments regarding projected energy and water savings as well as local economic and job impacts.

AB 1284 was also signed into law in California in October 2017 and established the following:

- Income verification and ability-to-pay underwriting standards, which became effective on April 1, 2018.
- Codifies in law the current underwriting standards widely used by the industry related to Loan to Value mortgage and property tax delinquencies.
- A licensing and regulatory framework for the industry, whereby, PACE originators will be regulated by the California Department of Business Oversight, which also regulates banks and finance companies in California.

According to the state treasurer’s office which tracks the vast majority of the PACE loans, there has been a drop off in PACE loans since the peak in 2016. It is worth noting that many of the new rules in AB 1284 became operative in January 2019.

PACE Program Enrollment Activity							
Year	2014	2015	2016	2017	2018	2019	2020
Amount	\$148 million	\$553 million	\$824 million	\$677 million	\$296 million	\$168 million	\$168 million

*Source: California State Treasurer (Treasurer.ca.gov/caeatfa/pace/activity.pdf)

In addition to consumer protection, the laws passed have expanded the eligible improvements that can be financed using PACE loans. Some of these improvements, such as house painting, provide minimal impacts towards efficiency goals. While these improvements may add value, BWP as a utility subject matter expert, is not able to comprehensively recommend a City position toward measures that are not efficiency or renewable energy focused.

PACE in Burbank

The City Council approved the City of Burbank’s participation in Los Angeles County’s (County) PACE program in July 2010. At the time of the decision, financing was not easily accessible due to a down economy. Further, the County program provided a viable option because the County undertook an open and extensive process to select third-party residential loan providers. The County’s qualifying process in 2014 resulted in two loan providers being authorized, HERO (administered by Renovate America) and California FIRST (administered by Renew Financial). These providers met the County’s requirements, including consumer protection provisions California FIRST has not been operating with the County since 2019.

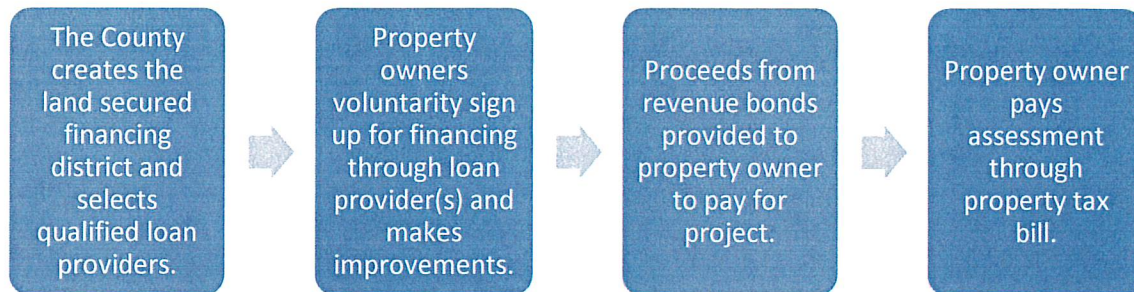
DISCUSSION

Through the County, the Residential PACE program completed projects at nearly 350 Burbank homes since May 2015. Of the more than 500 measures that have been installed, the majority – nearly 80 percent – have been for energy-related measures, with 15 percent for solar-related measures, and the remainder for water-related measures. Concurrently, the Commercial PACE program has not completed any projects in Burbank since May 2015.

Over the past several years, new PACE programs have been developed. Rather than relying on individual cities funding the loans via their General Fund or by selling bonds, these programs work through established Joint Powers Authorities (JPAs). The JPAs issue the bonds and the PACE program providers do the rest. The California State Treasurer lists six active PACE programs in California and 16 PACE programs that are no longer actively enrolling new financings as of June 2021. While PACE offers a

unique repayment opportunity, since its inception, the interest rate for money acquired through a PACE program has been relatively high: between 6 and 9 percent.

The County PACE program used a widely adopted structure of land secured financing:



Despite all these efforts and the implementation of stronger consumer protection protocols, the County's Pace program became subject to increasing criticism and lawsuits. Attachment 1 is an example of a lawsuit filed against PACE. In addition, the volume of financing requests decreased significantly, and future volume appeared uncertain given the ongoing COVID-19 crisis. Since the County could not be certain these measures would provide sufficient protection for all consumers, and because of decreased requests, the County made a decision to terminate the County PACE program, effective May 13, 2020.

ALTERNATIVES TO PACE

GoGreen Home Energy Financing (GoGreen Home)

BWP's residential customers can finance up to \$50,000 in home efficiency upgrades through a GoGreen Home loan through the California State Treasurer's Office. The program is funded by the State's investor-owned utilities (IOUs), including Southern California Edison, Pacific Gas & Electric Company, San Diego Gas & Electric Company, and SoCalGas. Since SoCalGas service BWP's customers, they are eligible to participate.

Unsecured Loan

Unlike the PACE program, GoGreen Home loans do not require home equity and do not place a lien on a customer's property. Rates are designed to be competitive, and the State has developed the program to help customers with lower credit scores to qualify.

70% of Upgrades Must be Gas Related

Since BWP customers are qualified under SoCalGas, 70% of the financed upgrades in Burbank must go to new, energy-efficient items that qualify under the list of gas-related upgrades. These include attic insulation, windows, and HVAC systems with gas-

powered furnaces. Attachment 3 provides an exhaustive list of items that are eligible for financing under the gas category.

The remaining 30% of financed upgrades can be used to upgrade non-gas appliances like whole-house fans, pool pumps, as well as non-energy related items such as landscaping.

As of 2021, the GoGreen program has over 530 enrolled contractors, 9 participating lenders, and over \$24 million in loans supported. Recognizing the need for financing for residential customers, BWP staff initiated contact with the State Treasurer's Office in 2020 to establish a working relationship. GoGreen Home is promoted on the BWP website, *Digital Currents* newsletters, and was featured in the February 2021 issue of *Print Currents*.²

The State also helps businesses and affordable multi-family property owners through its GoGreen Business Energy Financing and GoGreen Affordable Multifamily Energy Financing Programs. Staff will research how these programs might support BWP's commercial customers.

BWP On-Bill Financing

The City of Burbank's 2030 Greenhouse Gas Reduction Plan (GGRP) Update calls for the development of a "tariffed on-bill financing program or other incentive program to allow for equitable electrification of buildings within BWP service area."

On-bill financing is not common in the Western United States, though two of California's largest investor-owned utilities, Southern California Edison (SCE) and Pacific Gas & Electric (PG&E), utilize it as a means to help customers invest in energy efficiency. BWP staff is working to research how this may fit into the utility and city's broader push to beneficial electrification.

RECOMMENDATION

The number of PACE loans in California since a peak in 2016 has diminished. The decline may be a result of more stringent consumer protection laws, a good economy and increased property values that have made more financing options available to property owners, and FHFA's position that make sales or refinancing of properties that are subject to PACE Assessments more difficult, but it may still provide some value.

Possible options for Burbank include the following:

1. Burbank not taking any further actions to participate in PACE.
2. Burbank undertake creating a PACE program.
3. Burbank passing resolutions to join additional PACE programs.

² For more information on GoGreen and REEL loans, visit: <https://gogreenfinancing.com/residential>

It is important to note that neither BWP, the City of Burbank, nor the County have had any direct request from residents or businesses, the ostensible beneficiaries, about any specific request to facilitate access to PACE financing.

BWP proposes option one, not to take any further action to participate in PACE after the County decided to terminate their PACE program. Instead, BWP will continue to promote the State's GoGreen financing programs and research on-bill financing and other viable options for our customers.

ATTACHMENTS

Attachment 1 – Reginald Nemore Et Al vs. Renovate America Et Al (2018)

Attachment 2 – What is a Property Assessed Clean Energy (PACE) Loan?"

Attachment 3 – List of Eligible Energy Efficiency Measures (EEEMs)

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7 *Attorneys for Plaintiffs*
 (Additional Attorneys Listed on the Following Page)

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 REGINALD NEMORE, an individual;
 VIOLETA SENAC, an individual; AURELIA
 12 MILLENDER, an individual; and ALLEN
 BOWEN, an individual,

13 Plaintiffs,

14 vs.

15 RENOVATE AMERICA, INC., a Delaware
 16 corporation; the COUNTY OF LOS
 ANGELES; and DOES 1 through 10,

17 Defendants.

Case No. BC701810 [Related Case BC701809]

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. **FINANCIAL ELDER ABUSE**
(against Renovate America)
2. **FINANCIAL ELDER ABUSE**
(against the County of Los Angeles)
3. **BREACH OF CONTRACT**
4. **DECLARATORY RELIEF RE:
UNLAWFUL CONTRACT**
(Cal. Civil Code § 1670.5)
5. **DECLARATORY RELIEF RE:
UNLAWFUL CONTRACT**
(Cal. Civil Code § 1668)
6. **VIOLATION OF BUS. & PROF.
CODE § 17200**
7. **CANCELLATION OF TAXES**
8. **DECLARATORY RELIEF**
9. **REFUND (against the County of Los
Angeles)**

AND DEMAND FOR JURY TRIAL

1 **Complete List of Counsel for Plaintiffs:**

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1 Plaintiffs Reginald Nemore, Violeta Senac, Aurelia Millender, and Allen Bowen,
2 individually and on behalf of all others similarly situated, allege the following against Defendants
3 Renovate America, Inc. (“Renovate America”) and the County of Los Angeles (the “County”):

4 **OVERVIEW OF THE DISPUTE**

5 1. For the last five years, Renovate America and the County of Los Angeles have
6 harmed thousands of low-income, elderly, and non-native English-speaking homeowners
7 throughout the County, through a program known as Property Assessed Clean Energy (“PACE”).
8 The California Legislature authorized local governments to implement PACE programs, and the
9 County enacted its PACE program in 2012. The County delegated administrative responsibility to
10 Renovate America, and to non-party Renew Financial, in 2015.¹

11 2. In May 2020, the County discontinued the PACE program. In doing so, the County
12 itself publicly acknowledged that it could not protect homeowners from consumer protection
13 abuses suffered as a result of the PACE program. But the County and Renovate America have yet
14 to answer for the harm done to the tens of thousands of homeowners who were signed up for
15 PACE loans while the program was operational.

16 3. The County’s stated goal for the PACE program was laudable—to “enable[]
17 homeowners to install energy efficiency, renewable energy, and water-saving improvements to
18 their properties without putting any money down.” Ex. A (“Los Angeles County PACE,”
19 available at <http://pace.lacounty.gov/residential/index.html>). The reality of the PACE program,
20 however, was very different. The County’s PACE program has been a disaster for thousands of
21 vulnerable homeowners.

22 4. The PACE program utilized incompetent and unscrupulous home improvement
23 contractors as salespeople, and these contractors sold homeowners overpriced and defective goods
24 and services, often mauling their homes with shoddy and incomplete projects. The PACE
25 program loans made its victims’ homes more difficult to sell or refinance, encumbered their
26 equity, made it nearly impossible for them to borrow additional funds, increased their property tax

27 _____
28 ¹ Renew Financial’s improper conduct in connection with the PACE program is addressed in a
separate complaint, filed concurrently in the related case BC701809.

1 payments and mortgages beyond their ability to pay, and left them in or on the edge of foreclosure.
2 Many PACE participants have taken on debt beyond their means to repay. Many PACE
3 participants are struggling to hold onto their homes, fearful of what lies ahead.

4 5. The County's PACE program had many serious flaws.

5 • *First*, Renovate America approved PACE loans based on the equity in the
6 homeowner's property, not on his or her ability to repay the loan. This was problematic because,
7 no matter how much equity an owner may have in his or her home, he or she can still lack the
8 income to repay a loan for even a small fraction of that equity.

9 • *Second*, by classifying PACE financing as a tax assessment rather than a loan, the
10 County and Renovate America circumvented traditional regulations and consumer protections that
11 govern loans secured by real property.

12 • *Third*, the County imposed an assessment on homeowners' property tax bills to
13 collect the PACE loan. If the homeowner fails to pay the PACE assessment, the County deems
14 the homeowner to have defaulted on his or her property taxes and, as a result, the County has the
15 right to foreclose, to sell the house, and to evict the PACE loan participant.

16 • *Fourth*, although the PACE special assessments are allegedly "voluntary," the
17 County did not allow any individual homeowner to negotiate the terms of his or her assessment,
18 but instead relied on "take it or leave it" agreements presented to homeowners by home
19 improvement salesmen who had a financial stake in homeowners agreeing to the financing in the
20 first place.

21 • *Fifth*, the PACE loans are secured by liens on the properties, which catapult over
22 every previous lien to take the first priority position. That structure puts the homeowners
23 potentially in default under their existing mortgages, under which homeowners typically promise
24 their lender that it will be in first position.

25 • *Sixth*, that first priority position, and the fact that the PACE loans are based on
26 home equity, materially reduced the County's risk in making PACE loans and rendered the PACE
27 interest rates unjustified and excessive. Plaintiffs and class members are thus stuck paying above-
28 market interest rates for the privilege of participating in a ruinous secured-lending program that

1 the County has since discontinued.

2 6. The County cannot claim to be surprised by any of these serious problems. To the
3 contrary, not only were these problems predictable, but they *actually were predicted*. County
4 Treasurer and Tax Collector Mark J. Saladino warned the County Supervisors of these harms in
5 August 2014, *before* the County implemented its residential PACE program and *before* it engaged
6 Renovate America (and Renew America) to run it:

7 It is the Treasurer and Tax Collector's expectation that borrowing costs for
8 residential PACE participants will also be *materially* higher than comparable
9 rates on both home equity lines of credit and home equity loans.

10

11 The FHFA [Federal Housing Finance Agency] asserted that PACE
12 assessments violated the terms of the uniform security instrument utilized in
13 mortgage contracts purchased by the Federal Mortgage Agencies [Fannie
14 Mae and Freddie Mac]. This assertion has been reviewed by County Counsel
15 and found to be accurate

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17 County Counsel determined that the Federal Mortgage Agencies would likely
18 have the ability to declare an event of default ... as a result of PACE
19 assessments.... If the property owner were neither able to cure the default
20 through full payment of the PACE assessment nor the mortgage contract, the
21 Federal Mortgage Agency could initiate foreclosure proceedings

22 *See* Ex B at 5, 6, 7 (August 12, 2014 Saladino Letter to County Board of Supervisors) (emphasis
23 added).

24 7. Despite these stark and straightforward warnings, the County plunged ahead,
25 authorizing and designing an extraordinarily large scale PACE program. The County initially
26 authorized \$100 million in bonds (with authorization to sell up to \$1 billion), and used the
27 proceeds to make individual PACE loans. *See* Ex. D at 3-4 (“Resolution of the Board of
28 Supervisors Authorizing the Establishment of a Special Fund for the LACEP, the Issuance and
Sale of Bonds and the Execution and Delivery of Certain Documents in Connection with the
LACEP, and Authorizing a Validation Action and Certain Actions Related Thereto”); Ex. E at 6
 (“Los Angeles County Energy Program, Program Report”). The County aimed to have 15,000
 PACE program participants within the first few years. *See id.* at 2.

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1 8. The County exceeded even that ambitious goal. When the County finally
2 terminated the PACE program in May 2020, an estimated 30,000 homeowners or more had been
3 saddled with hundreds of millions of dollars' worth of unaffordable PACE loans.

4 9. The County outsourced administration of the PACE program to two private
5 administrators, one of which was Renovate America, pursuant to a March 2015 contract (the
6 "Administration Contract"). *See* Ex. F. Renovate America profited from each PACE loan it
7 originated through fees, and through the ability to sell its interest in PACE loans as asset-backed
8 securities. The County profited through collecting recording fees and other administrative fees.

9 10. The County knew that the PACE program could harm homeowners, including
10 vulnerable populations such as elders and individuals who were not fluent in English. Thus, the
11 County required Renovate America to ensure "best in class protections" for the benefit of
12 homeowners who participated in the PACE program, including protection from "predatory
13 lending, unscrupulous contractors and poor-quality assessment servicing." *Id.* at Ex. F, "Ex. A
14 Statement of Work" § 5.1.

15 11. Renovate America agreed to provide these "best in class protections." Renovate
16 America also promised to provide special protections for seniors and to create a "Consumer
17 Protection Measures Plan." *Id.* at §§ 5.2.4, 5.2.5, 5.2.8. Renovate further agreed to "Provide
18 assistance in multiple languages, other than and in addition to English, to ensure consumers
19 understand the terms of their financing in their native language." *Id.* at § 5.2.5.

20 12. All of these promises were false. Renovate America reneged on every single one
21 of them. And when Renovate America did so, the County looked the other way.

22 13. Eventually, the County stopped the PACE program, and its relationship with
23 Renovate, belatedly recognizing its and the program administrators' failure to provide consumer
24 protections. Nevertheless, the County continues to ignore the plight of homeowners who entered
25 the program before it was dissolved.

26 14. The most basic form of protection against predatory lending is to ensure that the
27 potential borrower *can afford* to repay the loan, whether through earnings or other sources. This
28 basic protection was glaringly absent from the County's PACE program. To the contrary,

1 Renovate America’s primary lending criterion was whether the borrower’s home was worth more
2 than the value of the PACE loan and other secured debts. That approach ensured the County
3 would get its money in the event of a default, but it did nothing to assess whether a homeowner
4 could afford to repay a PACE loan. In other words, as long as the County, Renovate America, and
5 bondholders were sure to get repaid, they paid no attention to whether a homeowner was oversold
6 improvements or ended up on the street. The absence of ability-to-pay protections makes PACE
7 assessments textbook examples of predatory loans. Even worse, because the assessments are
8 secured by the borrowers’ homes, these predatory loans put unlucky county residents at risk of
9 homelessness.

10 15. Numerous federal agencies criticized the PACE program before, during, and after
11 Defendants’ adoption and implementation of that program. The FHFA warned that the program
12 could place homeowners in default under their mortgages and put them at risk of foreclosure. *See*
13 Ex. G (Summary of Speech by Alfred M. Pollard, General Counsel, Federal Housing Finance
14 Agency, available at [https://www.fhfa.gov/Media/ PublicAffairs/Pages/Pollard-Statement-before-](https://www.fhfa.gov/Media/PublicAffairs/Pages/Pollard-Statement-before-California-Legislature-Keeping-Up-with-PACE.aspx)
15 [California-Legislature-Keeping-Up-with-PACE.aspx](https://www.fhfa.gov/Media/PublicAffairs/Pages/Pollard-Statement-before-California-Legislature-Keeping-Up-with-PACE.aspx).) The Department of Housing and Urban
16 Affairs reached the same conclusion. *See* Ex. H (Dept. of Housing and Urban Development Press
17 Release No. 17-111 (Dec. 7, 2017)) (“In addition, such [PACE] activity is risky for FHA [Federal
18 Housing Administration] borrowers and potentially violates the terms of their FHA-insured
19 mortgage.”).

20 16. And, in 2017, the Securities and Exchange Commission (“SEC”) and the Federal
21 Bureau of Investigation (“FBI”) demanded information from Defendant Renovate America about
22 its California PACE program. *See* Ex. I (Kristen Grind, “FBI, SEC Look Into Business Practices
23 of Country’s Largest ‘Green’ Lender,” Sep. 26, 2017, at [https://www.wsj.com/ articles/ fbi-sec-](https://www.wsj.com/articles/fbi-sec-look-into-business-practices-of-countrys-largest-green-lender-1506430977)
24 [look-into-business-practices-of-countrys-largest-green-lender-1506430977](https://www.wsj.com/articles/fbi-sec-look-into-business-practices-of-countrys-largest-green-lender-1506430977)).

25 17. *The Wall Street Journal* characterized PACE as the new “subprime crisis” for its
26 reckless extension of credit to homeowners. *See* Ex. C (Kristen Grind, “America’s Fastest-
27 Growing Loan Category Has Eerie Echoes of the Subprime Crisis,” Jan. 10, 2017, available at
28 <https://www.wsj.com/articles/americas-fastest-growing-loan-category-has-erie-echoes-of->

1 [subprime-crisis-1484060984](#)). As detailed below, that is an understatement.

2 18. Meanwhile, other California local governments suspended or cancelled their PACE
3 programs, after seeing its flaws and the harms it had inflicted on their citizens.²

4 19. Despite these red flags, the County and Renovate America plunged ahead with the
5 PACE program for several years, continuing to sell thousands of vulnerable County residents
6 overpriced and unaffordable loans that put their home ownership at risk.

7 20. By this action, Plaintiffs seek to clean up the PACE mess that the County and
8 Renovate America created and chose to leave behind, even while recognizing the inherent
9 shortcomings of their own program.

10 21. Plaintiffs bring this action on their own behalf, and on behalf of a class of all
11 persons who entered into PACE financing via Assessment Agreements with the County who meet
12 the criteria stated in paragraph 145 (the “**PACE Class**”), the criteria stated in paragraph 147 (the
13 “**Ability to Pay Subclass**”), the criteria stated in paragraph 149 (the “**DTI Subclass**”), the criteria
14 stated in paragraph 152 (the “**Predatory Loan Subclass**”), the criteria stated in paragraph 153 (the
15 “**Mortgage Subclass**”), and the criteria stated in paragraph 154 (the “**Language Subclass**”).
16 Plaintiffs Senac, Millender, and Bowen also bring this action on their own behalf, and on behalf of
17 a subclass of all persons who meet the criteria stated in paragraph 151 (the “**Elder Subclass**”).
18 Plaintiffs and members of the proposed class and subclasses (collectively, “**Class Members**”)
19 seek restitution from Renovate America of amounts paid, declaratory and injunctive relief, and
20 other appropriate remedies from Renovate America and the County for violations of the law
21 including but not limited to:

22 a. As to persons over the age of 65, Defendants Renovate America and the
23 County violated the Elder Abuse Statute, Welfare & Institutions Code sections 15600, et
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25 ² For example, in response to rampant abuse and harm to homeowners, Kern County ended its
26 PACE program in June 2017. Ex. P (Daniel Freeman, “Kern Board of Supervisors votes to shut
27 down PACE program,” June 14, 2017, available at [http://www.kerngoldenempire.com/news/local-
28 news/kern-board-of-supervisors-votes-to-shut-down-pace-program/740863394](http://www.kerngoldenempire.com/news/local-news/kern-board-of-supervisors-votes-to-shut-down-pace-program/740863394)). The City of
Bakersfield followed suit one month later. Ex. Q (Steven Mayer, “Bakersfield City Council ends
PACE loan program,” Jul. 19, 2017, available at [http://www.bakersfield.com/news/bakersfield-
city-council-ends-pace-loan-program/article_e33cc8b0-6cfc-11e7-b4b9-4775b9e99903.html](http://www.bakersfield.com/news/bakersfield-city-council-ends-pace-loan-program/article_e33cc8b0-6cfc-11e7-b4b9-4775b9e99903.html)).

1 seq., by (among other things) taking, secreting, appropriating, obtaining and/or retaining
2 the property of elder persons entitled to the protection of the statute, for wrongful use.

3 b. Defendant Renovate America breached its express obligations under the
4 Administration Contract. Plaintiffs and Class Members are express third-party
5 beneficiaries of Defendant Renovate America's promises to the County to implement "best
6 in class protections" against predatory lending, to provide "special protections" for PACE
7 program participants over 65 years old, and to take other steps set forth in that contract to
8 protect and serve customers.

9 c. Defendant Renovate America violated the Unfair Competition Law,
10 Business & Professions Code sections 17200, et seq., in that its PACE program practices
11 were unfair and unlawful.

12 d. Defendants Los Angeles County and Renovate America have illegally or
13 erroneously encumbered the title to the Plaintiffs' and Class Members' property, as a result
14 of statutory violations and breach of the Administration Contract, through the imposition
15 of tax liens and assessments, which encumbrances should be cancelled.

16 e. Plaintiffs and Class Members dispute the enforceability of the liens on the
17 subject homes, the enforceability of the underlying Assessment Agreements, and the rights
18 of Defendants to maintain the liens and impose tax assessments to pay off the PACE loans.

19 **JURISDICTION & VENUE**

20 22. This Court has personal jurisdiction over Defendants. The events giving rise to this
21 case occurred in the State of California. Defendants have been afforded due process because they
22 have, at all times relevant to this matter, individually or through their agents, subsidiaries, officers
23 and/or representatives, operated, conducted, engaged in and carried on a business venture in this
24 State, and/or maintained an office or agency in this State, and/or provided services, committed a
25 statutory violation within this State related to the allegations made herein, and caused injuries to
26 Plaintiffs and Class Members, which arose out of the acts and omissions that occurred in the State
27 of California, during the relevant time period, at which time Defendants were engaged in activities
28 in the State of California, resulting in injuries to Plaintiffs and Class Members.

1 agents and sub-agents. In addition, Plaintiffs are informed and believe that Renovate America was
2 an agent, servant, and fiduciary of the County, and that Renovate America at all times mentioned
3 herein was acting within the course and scope of that relationship.

4 31. The true names and capacities of Defendants DOES 1 through 10 are unknown to
5 Plaintiffs. Plaintiffs will seek leave of court to amend this complaint to allege such names and
6 capacities after they are ascertained. Each of the Defendants herein was the agent, joint venturer,
7 or employee of each of the remaining Defendants, and in engaging in the acts hereinafter alleged,
8 each was acting in the course and scope of its agency, employment, or joint venture with advance
9 knowledge of, acquiescence in, or subsequent ratification of the acts of each and every other
10 remaining defendant. Each DOE Defendant is responsible, legally, negligently, or in some other
11 actionable manner, for the events and happenings referred to in this Complaint, and caused injuries
12 and damages proximately thereby to Plaintiffs and the Class as hereinafter alleged, either through
13 co-defendants' conduct, or through the authorized and/or ratified conduct of its agents, servants, or
14 employees, or in some other manner.

15 32. Renovate America, the County, and DOES 1 through 10 are referred to herein
16 collectively as "Defendants."

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 **A. In 2008, California Authorized Local PACE Programs.**

19 33. The California Legislature introduced PACE in 2008. The legislative history
20 reflects an intent that PACE's novel method of financing energy efficiency and water conservation
21 improvements would benefit California homeowners, including homeowners without access to
22 traditional sources of capital for home improvements.

23 34. The primary participants in a PACE program are: (a) a government entity (typically
24 a county or city) who authorizes the sale of public improvement bonds for initial funding of the
25 program; (b) a non-governmental entity, usually a private business, that administers the program
26 for the government entity (the "program administrator"); (c) home improvement contractors who
27 solicit homeowners to enter into qualifying energy efficiency or water conservation projects and
28 perform the work (typically after the program administrator approves the proposed contract); and

1 (d) homeowners who contract for the offered improvements.

2 35. To finance the cost of the improvements, the homeowner enters into an Assessment
3 Agreement with the public entity (here, the County). The Assessment Agreement grants the
4 County the right to place a lien on the homeowner's property in the amount of the principal, plus
5 fees and capitalized interest (the "PACE Lien"). The PACE Lien takes first priority, ahead of any
6 pre-existing loan or mortgage. To collect payments on the PACE Lien, plus interest and
7 additional fees, the County adds an additional assessment to the owner's annual property tax bill.
8 The additional assessment is collected at the same time and in the same manner as the
9 homeowner's property taxes. If the property owner fails to pay, the County has the right to
10 foreclose, as do Renovate America and any investors who have purchased an interest in the PACE
11 Lien.

12 36. The PACE Lien remains on title until fully repaid, so, in theory, if a homeowner
13 sells the house before the loan balance has been fully repaid, the PACE obligation "remains on
14 title" and becomes an obligation of the new owner. The fact that the PACE loan would "run with
15 the property" has been an important selling point, starting with the California Legislature and
16 continuing to the County, Renovate America, and ultimately to homeowners interested in
17 participating in the PACE program. *See, e.g.*, Ex. E, at 2 (noting that a purported benefit of the
18 County's PACE program is that it "establishes a loan obligation that is attached to the property
19 and not to the individual borrower.").

20 37. In reality, however, PACE Liens make it virtually impossible for homeowners to
21 pass the obligation to subsequent homeowners. Because the PACE Liens enjoy "super priority"
22 status, mortgage lenders will rarely agree to subordinate their interests to an existing PACE Lien,
23 and homeowners are often forced to pay off their PACE Liens before any mortgagee or bank will
24 agree to provide any additional mortgages, home equity loans, or home equity lines of credit.

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1 **B. In 2015, the County Hired Renovate America to Serve as a PACE**
2 **Program Administrator.**

3 38. After the California Legislature authorized PACE programs, Renovate America
4 entered into agreements with county and city governments around the State to serve as those
5 entities' program administrator.

6 39. Renovate America used that experience to market itself to the County. Following
7 extensive negotiation and administrative review, in March 2015, the County and Renovate
8 America entered into the Administration Contract, attached hereto as Exhibit F and incorporated
9 herein by this reference.

10 40. In approving that contract, the County's Board of Supervisors' resolutions assured
11 the public that "the Treasurer will pursue underwriting criteria, largely dictated by the bond
12 market, to help ensure that only creditworthy individuals are approved for loans." Ex. J at 6 (May
13 25, 2010 Board of Supervisors Adopted LACEP Recommendation to the Board from County
14 Chief Executive Officer and Director of Internal Services Department).

15 41. Exhibit A to the Administration Contract (attached as Ex. F to this Complaint),
16 titled "Statement of Work," details Renovate America's many obligations to the County and to
17 PACE program participants—that is, to homeowners like Plaintiffs and Class Members—as third-
18 party beneficiaries. Those obligations include, among others, those listed under the heading
19 "Consumer Protection Measures."

20 42. The first of those consumer protections to which Renovate America agreed under
21 the Administration Contract was that it would "ensure *best in class protections for property*
22 *owners* from actions such as, including but not limited to, predatory lending, unscrupulous
23 contractors and poor-quality assessment servicing." *Id.* at §5.1 (emphasis added).

24 43. As part of its obligation to ensure those "best in class protections," Renovate
25 America agreed "*at a minimum*" to do the following:

- 26 a. "Implement a multi-faceted approach to consumer protection and integrate
27 it into training modules [for contractors] including: brand usage guidelines, marketing
28 activity policies, advertising policies, sales and training protocol, and collateral." *Id.* at §

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b. “Provide special protection for seniors over 65 years of age to confirm they clearly understand the terms of the financing.” *Id.* at § 5.2.4.

c. “Provide assistance in multiple languages, other than and in addition to English, to ensure consumers understand the terms of their financing in their native language.” *Id.* at § 5.2.5.

d. “Enforce all policies and procedures for compliance.” *Id.* at § 5.2.6.

e. “Prior to Program Launch, create a *Consumer Protection Measures Plan*, included as part of the Operations Manual [for contractors], and provide to the County for comment and approval.” *Id.* at § 5.2.8.

44. Plaintiffs are informed and believe that Defendants failed to adhere to these required standards and failed to provide these benefits to PACE program participants.

C. Renovate America Ignored Borrowers’ Ability to Repay.

45. If Renovate America had met its obligations to provide homeowners the “best in class” protections against predatory lending described above, it would have, at a minimum, used an ability to repay analysis in deciding whether to approve each PACE Lien application. *See, e.g.*, Ex. G (expressing FHFA’s disapproval of PACE’s failure to conduct an ability to repay analysis).

46. Renovate America failed to do that. To the contrary, during the class period, Renovate America’s underwriting standards did not contain any ability to repay criterion. Instead, the primary consideration for underwriting a PACE loan was whether there is enough equity in the homeowner’s property (*i.e.* the difference between what the house would sell for and the unpaid amount of any mortgage and other liens). Thus, Renovate America asked only: If the homeowner fails to repay the PACE Lien, will the proceeds from the foreclosure be sufficient to repay it? In other words, Renovate America decided whether to make a PACE loan based solely on whether the loan could be fully repaid by the forced sale of the asset securing the loan—without a care that such a forced sale would mean kicking the homeowner out of his or her house and onto the street. Paired with the dramatically above-market interest rates for loans that were already low-risk to the lender, this is paradigmatic predatory lending.

1 **D. Renovate America Recruited and Unleashed an Army of Contractors to**
2 **Serve as Unlicensed Mortgage Brokers.**

3 47. Renovate America did not use licensed loan or mortgage brokers to market or
4 originate PACE Liens. Instead, Renovate America drafted battalions of “Renovate Registered
5 Contractors” both to sell PACE financing, and to sell and install the home improvements to be
6 financed. Typically, Renovate Registered Contractors introduced homeowners to the PACE
7 program, facilitated the financing application process, and obtained homeowners’ signatures on
8 PACE contracts, usually via electronic signature.

9 48. To become a Renovate Registered Contractor, the contractor must have agreed,
10 among other things, to:

- 11 a. Install products for reasonable, market-based prices that are within industry
12 price guidelines, Ex. K at 5 (“Registered Contractor Terms and Conditions”);
- 13 b. Analyze accurately each homeowner’s energy usage, and anticipated energy
14 savings, *id.* at 13, and
- 15 c. Present property owners with the full and complete set of HERO financing
16 documents, when asked to do so by Renovate America. *Id.*

17 49. Renovate America publicly claimed that: “Everyone agrees to the rules. Every
18 contractor registered with Renovate America has agreed to follow our guidelines, which includes
19 our industry-leading consumer safeguards.” Ex. L (“Find the Right Contractor, Right Away,”
20 available at <https://www.renovateamerica.com/find-a-contractor>). In fact, the Administration
21 Contract *required* Renovate America to “enforce all policies and procedures for [contractor]
22 compliance.” Ex. F at Ex. A, Statement of Work § 5.2.6.

23 50. In many cases, Renovate Registered Contractors were the primary source of
24 information that homeowners received (or did not receive) about the PACE program and its
25 financing terms before a homeowner entered into a PACE loan. Often, the homeowner did not
26 receive a copy of the PACE financing contract until after the improvement work had already been
27 completed and the homeowner had become obligated to pay for that work.

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1 51. Renovate America directly and indirectly encouraged its Renovate Registered
2 Contractors to market PACE aggressively. This encouragement included, but was not limited to,
3 the following: (a) Renovate America rubber-stamped its approval of payment in full to contractors
4 for any home improvement contract submitted for HERO financing, without regard to whether the
5 contractor followed the guidelines required of a Renovate Registered Contractor; (b) Renovate
6 America instructed its Renovate Registered Contractors that they did *not* need to determine if the
7 potential customer could afford the loan; and, (c) in practice, Renovate America informed its
8 Renovate Registered Contractors how much equity each homeowner had available and instructed
9 the contractors that they could and should base the amount of improvements they sold to
10 homeowners on their available equity.

11 52. Because the amount of PACE financing that a homeowner can receive is based on
12 the home's equity rather than a homeowner's ability to repay, PACE loans are typically much
13 larger than traditional home improvement loans. This structure encouraged Renovate Registered
14 Contractors to solicit as many PACE-financed contracts as possible and to upsell and overcharge
15 homeowners as much as possible. Unsophisticated homeowners were left to guess whether the
16 contract prices were reasonable and whether they could afford to repay the PACE loans. Prices on
17 PACE-financed work skyrocketed upward, and contractors pocketed profit margins of as much as
18 75% from a program designed to help low- and moderate-income homeowners.

19 53. At Renovate America's direction, predatory contractors targeted homeowners with
20 relatively high equity in their homes. In particular, contractors routinely targeted homeowners
21 who, often despite getting by on a modest fixed-income, had achieved the American dream of
22 owning their home and who had slowly and steadily built substantial equity in it over the years.

23 **E. The County Offloaded the Risk of Its PACE Program.**

24 54. Akin to what home mortgage lenders did in the lead-up to the 2008 financial
25 meltdown, the County and the PACE Administrators, including Renovate America, offloaded
26 risks by securitizing PACE payments into asset-backed securities and selling them to Wall Street
27 investors. As with the subprime mortgage crisis, the lenders (i.e. the PACE administrators and the
28 County) effectively transferred any risks associated with these PACE-backed securities away from

1 themselves. However, unlike the notorious home lenders of the last decade, the County has the
2 ability to use its full governmental powers to collect on the debts homeowners owed, and the
3 County, Renovate America, and PACE investors have priority over every other creditor.

4 55. To make those bonds attractive, the County assured potential purchasers that the
5 County would continue to use its official property tax collection apparatus to collect PACE loan
6 payments and “quickly foreclose on a delinquent obligor’s property”—a power that no bank or
7 other lender had at its disposal. Ex. M at 18 (Kroll Bond Rating Agency Hero Funding 2017-2
8 Class Notes Pre-Sale Report).

9 56. But because of statutory restrictions, the County had to pay higher rates of interest
10 to these bondholders. It passed those costs on to PACE program participants through higher
11 interest rates. As County Treasurer and Tax Collector Saladino told the County Supervisors in
12 August 2014, *before* the County implemented the residential PACE program and *before* it
13 engaged Renovate America:

14 It is a legal requirement that all PACE bonds be issued on a taxable basis and
15 not as tax-exempt securities. As a result, the interest rate on PACE
16 assessments will be substantially higher than what could be achieved by the
17 County in the tax-exempt municipal market. It is the Treasurer and Tax
Collector’s expectation that *borrowing costs for residential PACE
participants will also be materially higher than comparable rates on both
home equity lines of credit and home equity loans.*

18 See Ex B at 5 (emphasis added).

19 57. Mr. Saladino’s candid admission flatly contradicts the avowed purpose of the
20 PACE program and undermines a key alleged benefit to homeowners that the County and
21 Renovate have promoted. The PACE program was supposed to harness the borrowing power of
22 county and municipal governments to help low-income homeowners finance energy and water
23 saving projects that they could not otherwise afford. Instead, as the County’s pre-implementation
24 admission confirms, the County loaned PACE homeowners money at above-market rates. Instead
25 of providing the claimed benefit to homeowners, the County’s PACE program has been a profit
26 center for Renovate America, building contractors, and Wall Street bond holders—financed on the
27 backs of low-income County residents.

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1 58. In addition, Defendants knew that they would have difficulty in packaging and
2 flipping the portfolio of PACE loans to Wall Street investors unless they either raised the interest
3 rates or gave the bondholders the right to initiate foreclosure on any PACE program participant
4 who failed to repay his or her PACE loan. *See id.* at 4. Sadly, the program instituted by the
5 County did both.

6 59. The County also enticed investors by promising investments that were immune to
7 legal challenge, at the expenses of the legal rights and remedies of the homeowners the program
8 was designed to help.

9 **F. The County’s Assessment Agreements are Unconscionable Contracts of**
10 **Adhesion that Force Homeowners to Waive All Rights and Remedies.**

11 60. PACE is a unique financing product for which no comparable market alternative is
12 reasonably available. PACE offers “no money down” for approved home improvements, a feature
13 generally not offered by traditional home equity or mortgage lenders or home improvement
14 contractors. Indeed, part of the legislative purpose of PACE was to extend credit to individuals
15 who did not have the capital otherwise to purchase green home improvements through more
16 traditional means.

17 61. Lending without assessing the borrower’s ability to pay is also a PACE practice in
18 which traditionally regulated mortgage and bank lenders typically do not engage. In fact, federal
19 regulations require lenders to make a “reasonable and good faith determination at or before
20 consummation that the consumer will have a reasonable ability to repay the loan according to its
21 terms” before making a loan secured by a dwelling. 12 C.F.R. § 1026.43(c)(1).

22 62. To participate in the County’s PACE program, homeowners were required to sign a
23 document entitled LA HERO Program Assessment Contract (Residential) (referenced elsewhere in
24 this Complaint as the Assessment Agreement) which is subsequently recorded as a security
25 interest against the homeowner’s property (the PACE Lien).

26 63. The Assessment Agreement is a lengthy, single-spaced form contract between the
27 County of Los Angeles and the homeowner. It contains over twenty sections, many containing
28 subparagraphs, enumerating the homeowners’ obligations with respect to payment and other

1 topics. Among other provisions, it includes: an obligation of the homeowner to indemnify the
2 County against any expenses whatsoever related even indirectly to the PACE program, regardless
3 of when they accrue; a right of the County to inspect the property; and a release and waiver of any
4 claim the homeowner has, or in the future may have, against the County.

5 64. The Assessment Agreement was drafted by the County. The terms of the
6 Plaintiffs' Assessment Agreements are standard. Plaintiffs had no negotiating power over any
7 term of the Assessment Agreement.

8 65. The Assessment Agreements do not include the individual homeowner's name,
9 address, or any individualized information about the Plaintiffs' PACE transaction apart from
10 exhibits which, while incorporated by reference, are not signed to indicate that the homeowner
11 actually read or received the documents.

12 66. Buried within the form Assessment Agreement, in the same style and font as every
13 other section of the agreement, is a section inconspicuously titled: "Waivers, Acknowledgment
14 and Contract" which contains the following:

- 15 a. A waiver of any otherwise applicable Constitutional requirements.
- 16 b. Waiver of the right to repeal the Assessment "by initiative or any other
17 action, or to file any lawsuit or other proceeding to challenge the [a]ssessment
18 [o]bligations or any aspect of the proceedings of the County undertaken in connection with
19 the [PACE] Program."
- 20 c. An acknowledgement that the property owner is responsible for paying the
21 assessment, whether or not the home improvements are installed as expected.
- 22 d. A release of the County and any bond purchaser from any damages relating
23 to the subject matter of the agreement, whether acquired at the time of the contract or
24 thereafter.
- 25 e. A waiver of section 1542 of the California Civil Code, a statute which
26 would ordinarily exempt unknown claims from a general release.
- 27 f. A stipulation that these waivers shall survive termination of the agreement.

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1 67. Also buried in the agreement, in the same font as the rest of the document, is a
2 unilateral indemnification provision that requires the property owner to agree to indemnify,
3 defend, protect, and hold harmless the County from any losses resulting from “any demands of
4 any nature whatsoever related directly or indirectly to, or arising out of or in connection with” the
5 homeowner’s participation in the PACE program, the assessment, the improvement, or “any other
6 circumstance or event related to the subject matter of this Agreement, regardless of whether such
7 losses...accrue before or after the date of this Agreement.” The indemnification provision also
8 purports to survive termination of the Assessment Agreement.

9 68. In exchange for above-market rate financing, which the County made no inquiry to
10 determine if the homeowner could afford, and for which the County obtains a first-priority lien
11 with right of foreclosure, the County also required that the homeowner: (a) waive any and all legal
12 rights to challenge the assessment, including based on any issues with the improvements
13 themselves; (b) waive statutory protections against overbroad waivers contained in Civil Code
14 Section 1542; (c) waive any other rights, including by implication, statutory protection against
15 elder financial abuse and unconscionability; and (d) agree to pay the legal costs of the County in
16 which the property is located, as well as the legal costs of any bond purchaser associated with any
17 attempted challenge to any aspect of the assessment or improvements, even if arising before the
18 assessment contract was signed.

19 69. Nowhere in the Assessment Agreement is the homeowner advised to consult an
20 attorney.

21 70. Nowhere in the Assessment Agreement is the homeowner informed that the
22 agreement is negotiable. Instead, the contract is offered as a take-it-or-leave-it proposition.

23 71. The County contracted out to Renovate America the job of obtaining homeowner
24 signatures on these Assessment Agreements. Renovate America, in turn, allowed Participating
25 Contractors who had a personal stake in the homeowner signing up for PACE-financed home
26 improvements to present the Assessment Agreement to the homeowner for signature.

27 72. The waiver and indemnification clauses, separately and in conjunction with one
28 another, are oppressively one-sided and unjustifiably reallocate the entire risk of the County’s

1 conduct in connection with the Assessment Agreement to the homeowner in a situation where the
2 County is already fully protected from the primary risk of lending money -- non-payment -- by
3 virtue of the first-priority lien recorded in favor of the County to secure the homeowner's financial
4 obligations under the Assessment Agreement.

5 73. The effect of this imbalance is that homeowners are locked into financing contracts
6 for five to twenty-five years that, according to the County, they have no right to challenge for any
7 reason, whether arising before or after the homeowner signed the contract. If the homeowner
8 asserts a challenge, according to the County, the homeowner is on the hook for not only the
9 County's attorney's fees and damages, but damages to the County's bond purchasers. Even if the
10 County or its agents violate the law in administering their PACE program, the homeowner remains
11 obligated and the County can foreclose and take the homeowner's home after one missed
12 payment, without making any recourse, complaint, or defense available.

13 74. The Assessment Agreements do not require the County to adhere to even a minimal
14 standard of care in contracting with the Plaintiffs and Class Members and are incompatible with
15 the County's and Renovate America's promises to provide "best in class" consumer protections to
16 participating homeowners and special protections to homeowners over 65 years old. Indeed, these
17 provisions mock the notion that there is anything consumer-friendly about the County's PACE
18 program.

19 **G. The County Knew or Should Have Known That Its PACE Program**
20 **Would Hurt Vulnerable Homeowners.**

21 75. FHFA regulates mortgage lending through its supervision and oversight of the
22 Federal National Mortgage Association (commonly known as "Fannie Mae") and the Federal
23 Home Loan Mortgage Corporation (commonly known as "Freddie Mac"). Those entities purchase
24 and guarantee most of the loans PACE participants used to purchase their homes.

25 76. In 2014, the County's Treasurer and Tax Collector and the County's Director of its
26 Internal Services Department warned the County Board of Supervisors that the FHFA had
27 repeatedly objected to PACE, even before the County had authorized the PACE program in 2010.
28 According to the County Treasurer and Tax Collector, the FHFA had stated that "PACE programs

1 present safety and soundness concerns to the mortgage portfolios held by the Federal National
2 Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie
3 Mac) and the Federal Home Loan Banks.” See Ex. B at 2. Furthermore:

4 The FHFA asserted that PACE assessments violated the terms of the uniform
5 security instrument utilized in mortgage contracts purchase by the Federal
6 Mortgage Agencies [Fannie Mae and Freddie Mac]. This assertion has been
7 reviewed by County Counsel and found to be accurate with respect to the
8 uniform security instrument used in the majority of mortgage contracts within
9 California. It is estimated that upwards of 80% of all new mortgages in
10 California ... include terms and conditions specifically aligned with the
11 uniform security instrument referenced by the FHFA.

12 *Id.* at 6.

13 77. In plain English, the County knew before it launched its residential PACE program,
14 and before it hired Renovate America to administer it, that by giving the County a first priority
15 lien to secure the PACE loan, the vast majority of PACE program participants would
16 automatically be put into default under their mortgages:

17 County Counsel determined that the Federal Mortgage Agencies would likely
18 have the ability to declare an event of default ... as a result of the PACE
19 assessments.... If the property owner were neither able to cure the default
20 through full payment of the PACE assessment nor the mortgage contract, the
21 Federal Mortgage Agency could initiate foreclosure proceedings.

22 *Id.* at 7.

23 78. In advising the County Board of Supervisors, the County Treasurer and Tax
24 Collector was even more blunt about the plague the County was about to let loose:

25 It is the view of the Internal Services Department and the Treasurer and Tax
26 Collector that such risk [of homeowner default through participation in the
27 PACE program] can be fully eliminated only through federal legislation or a
28 change in the terms and conditions of the uniform security instrument [the
conventional loan agreement] utilized in California. By initiating a
residential PACE program, the County is making a determination that the risk
associated with current FHFA statements is manageable and should not
threaten property owners within Los Angeles County.

Id.

 79. These 2014 admissions make clear that the County knowingly chose to subject
thousands of its most vulnerable citizens to what the County knew was a serious risk of losing
their homes.

 80. Equally appalling, the County knew before it launched the PACE program and
hired Renovate America to administer it that one of the key selling points of the PACE program—

1 that the loan is an obligation on the property and not the homeowner—was a mirage. The County
2 Treasurer and Tax Collector was concerned, and the Board of Supervisors knew, that the FHFA
3 could require a County PACE participant to pay off the PACE loan if the homeowner sold or
4 refinanced his or her home. *See id.* at 6. And the County knew that, as a result of adopting the
5 PACE program, Fannie Mae and Freddie Mac might cease purchasing mortgages from banks in
6 the County. *Id.* If that happened, conventional sources of home lending and refinance would
7 disappear. The County also knew that this would affect not only PACE participants, but also
8 “those property owners who have no involvement with PACE except to live in an area that allows
9 for such financings.” *Id.* Here, too, the County turned a blind eye and plunged ahead with the risk
10 to which it was exposing potentially tens of thousands of low-income County homeowners.

11 81. In the ensuing years, the FHFA continued to sound alarm bells about PACE. In a
12 June 9, 2016, speech to the California Legislature, FHFA General Counsel Alfred Pollard
13 explained that PACE loans “increase the risk of loss to taxpayers” because they destroy the first-
14 priority lien status of loans insured by Fannie Mae and Freddie Mac and increase the risk that the
15 government—and hence taxpayers—will lose money due to PACE. Ex. G.

16 82. The FHFA’s concerns about the PACE program did not stand alone. The FHA
17 issues and insures mortgages on millions of home purchases and refinancings each year. FHA
18 mortgage insurance and loan parameters that meet FHA requirements can be necessary parts of
19 obtaining a loan from a conventional bank. Like the FHFA, the FHA objected to PACE. The
20 FHA refused to insure mortgages on properties with existing PACE Liens, except for the period
21 from July 2016 to December 2017. The FHA was “very concerned about PACE obligations being
22 placed on FHA-insured mortgages that are already outstanding. The post-endorsement placement
23 of these assessments on an FHA-insured mortgage creates a lack of transparency.... In addition,
24 such activity is risky for FHA borrowers and potentially violates the terms of their FHA-insured
25 mortgage.” Ex. H.

26 83. A third federal agency also expressed concerns about the PACE program. The
27 United States Department of Energy (“DOE”) directed counties adopting PACE programs to
28 consider a homeowner’s ability to repay before making a PACE loan. In its 2010 “Guidelines for

1 Pilot PACE Financing Programs”—issued *five years* before the County adopted its PACE
2 program—the DOE provided several “best practices” to PACE program administrators, like
3 Renovate America, one of which was considering the homeowner’s ability to repay as part of its
4 underwriting. The DOE suggested that program administrators ensure that borrowers have the
5 ability to repay through precautions such as limiting financing to projects that “pay for
6 themselves” by reducing the homeowner’s energy costs by more than the cost of the financing.
7 Ex. N at 2 (“Guidelines for Pilot PACE Programs,” available at [https://www1.eere.energy.gov/
8 wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf](https://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf)).

9 84. In addressing the epidemic of faulty PACE loans, the DOE revised its guidelines in
10 2016, stating that administrators “should confirm property owners can support the cost of the
11 PACE assessment by collecting and reviewing information from property owners on their
12 household income and debt obligations.” Ex. O at 8 (“Best Practice Guidelines for Residential
13 PACE Financing Programs,” available at [https://energy.gov/sites/prod/files/2016/11/f34/best-
14 practice-guidelines-RPACE.pdf](https://energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf)). The DOE also directed PACE program administrators to
15 provide homeowners financing terms for PACE loans before their right to cancel the home
16 improvement contract expired. *Id.* at 10.

17 85. The DOE noted that low-income and elderly homeowners were particularly
18 vulnerable to the harms of PACE loans. It advised PACE program administrators to provide extra
19 protections for these populations. According to the DOE, at a minimum, program administrators
20 should directly contact low-income and elderly homeowners to ensure that they had received the
21 necessary disclosures with the PACE financing terms, should review improvement costs to ensure
22 they are proportional to the anticipated savings, and should limit loans to those projects that pay
23 for themselves through expected energy savings. *Id.* at 10, 13-15.

24 **H. The California Legislature Enacts Statutes Designed to Address the**
25 **Problems with PACE Programs.**

26 86. In response to the concerns raised by consumer advocates, the California legislature
27 passed a series of bills which imposed statutory obligations on administrators. These bills were
28 passed into law on 2017 and amended in 2018, and they are codified in California Finance Code

1 §§ 22680, *et seq.* The law first took effect on April 1, 2018.

2 87. Section 22686 states: “A program administrator shall not execute an assessment
3 contract, and no work shall commence under a home improvement contract that is financed by that
4 assessment contract nor shall that home improvement contract be executed *unless the program*
5 *administrator makes a reasonable good faith determination that the property owner has a*
6 *reasonable ability to pay the annual payment obligations for the PACE assessment.*” Cal. Fin.
7 Code § 22686 (emphasis added).

8 88. Section 22687 goes on to list, in detail, the various factors that a PACE
9 administrator must analyze when determining a homeowner’s ability to pay. These factors include,
10 but are not limited to:

- 11 a. The monthly income of the mortgagor and any person over 18 years old
12 who is on the title to the property, as verified by the PACE administrator;
- 13 b. Other current or reasonably expected assets or income, as verified by the
14 PACE administrator, but *not including* “Nonliquid assets,” “Temporary sources of
15 income,” or “*Proceeds derived from the equity from the subject property*” (Cal. Fin. Code
16 § 22687(b)(2) (emphasis added));
- 17 c. The homeowner’s monthly housing expenses, including mortgage
18 payments, insurance, property taxes, and other pre-existing fees and assessments on the
19 property; and
- 20 d. The homeowner’s monthly debt obligations, including all secured and
21 unsecured debts, alimony, and child support.

22 89. These factors establish the legally required minimum ability-to-pay assessment that
23 a PACE administrator must conduct for each homeowner.

24 90. Additionally, PACE administrators are now required to make annual reports to the
25 Commissioner of the Department of Business Oversight. Cal. Fin. Code § 22692. Among the data
26 reported, PACE administrators must report information concerning “the overall impact on
27 property owners of the absence of a minimum residual income threshold.” *Id.*

28 ///

1 **I. Plaintiffs Have Exhausted Administrative Claims on Behalf of**
2 **Themselves and All Others Similarly Situated Because the**
3 **Administrative Process Applied to Plaintiffs' Claims Is Inadequate**

4 91. Plaintiffs filed a first amended complaint on January 24, 2019 ("FAC").

5 92. The County demurred to the FAC on the basis that Plaintiffs' PACE tax
6 assessments were subject to the same requirements as property taxes generally, and the named
7 plaintiffs had not exhausted administrative remedies before filing in court.

8 93. On May 16, 2019, the Court sustained the County's demurrer and stayed this
9 litigation to allow Plaintiffs to exhaust their administrative remedies before the County
10 Assessment Appeals Board, functioning as the Board of Equalization for Los Angeles County.

11 94. Pursuant to Revenue and Tax ("R&T") Code § 1603, Plaintiffs filed verified claims
12 with the County's Assessment Appeals Board ("AAB") using County form AAB100.³ The claims
13 sought cancellation of PACE assessments pursuant to R&T Code § 4986 and refund of associated
14 tax payments. Plaintiffs' claims were sought on behalf of themselves and all others similarly
15 situated.

16 95. Pursuant to R&T Code § 5142, Plaintiffs simultaneously sought a stipulation that
17 the issues in dispute—which were based on the claims in the FAC—were not issues of valuation.

18 96. Had the AAB heard Plaintiffs' administrative claims, Plaintiffs would have been
19 afforded a public hearing, an exchange of information, opportunity to submit new information at
20 the time of hearing, testimony under oath, subpoena power for witnesses, a hearing record, and
21 written findings of fact. The burden of proof for an owner-occupied dwelling would have
22 belonged to the assessor. The standard of proof would have been preponderance of the evidence.

23 97. On September 10, 2019, the AAB notified Plaintiffs that their applications were
24 being referred to the Los Angeles County Auditor-Controller for review and disposition pursuant
25 to R&T Code § 4986.

26
27 ³ Plaintiff Senac filed her assessment appeal on July 12, 2019. All other named plaintiffs filed
28 their assessment appeals on July 5, 2019, the first week the Assessment Appeals Board accepted
claims in connection with the 2019-2020 tax year.

1 98. Upon information and belief, no evidence or statement of facts was provided by the
2 AAB to the Auditor in connection with this transfer, other than Plaintiffs' claims as filed with the
3 AAB.

4 99. Plaintiffs attempted without success to determine the details of the administrative
5 procedure to be applied to Plaintiff's claims by the Auditor-Controller, if not the procedures set
6 forth in R&T Code §§ 1603 *et seq.* There are no equivalent administrative hearing procedures
7 associated with R&T Code § 4986.

8 100. Upon information and belief the Auditor-Controller did not have an existing
9 administrative procedure for adjudicating PACE cancellation claims when it received the referral
10 from the AAB.

11 101. On November 19, 2019, Plaintiffs received notice that the Auditor-Controller was
12 sending Plaintiffs claims to the Internal Services Department ("ISD"). Upon information and
13 belief, ISD is the agency that oversees the PACE program for the County and the agency that
14 signed and approved all recorded PACE assessments on behalf of the County.

15 102. That same day, Plaintiffs received letters from ISD requesting additional
16 information from Plaintiffs within two weeks to "evaluate" their cancellation claims. The letters
17 also sought authorization from Plaintiffs to request additional information from their PACE
18 administrator or other sources, and for other County departments to review and consider the
19 information submitted in any investigation the County deemed warranted.

20 103. On December 3, 2019, Plaintiffs submitted responses to ISD's requests,⁴ making
21 clear again that they were seeking relief on behalf of themselves and all others similarly situated,
22 on the grounds set forth in the First Amended Complaint. Copies of Plaintiffs' assessment
23 appeals, including the ISD addendum, are collectively attached hereto as Exhibit W.

24 104. Plaintiffs repeatedly asked the County to explain the administrative procedures
25 governing this review or to identify where the procedures could be found. In response to Public
26

27 ⁴ Plaintiffs submitted their responses to PACEclaims@isd.lacounty.com, an email address that,
28 upon information and belief, was created in approximately mid-September 2019, for the purpose
of accepting Plaintiffs' submissions.

1 Records Act (“PRA”) requests, neither ISD nor the Auditor-Controller provided reference to any
2 applicable statute, legislation, or publicly available information on the administrative process being
3 applied to Plaintiffs’ claims for cancellation of PACE assessments.

4 105. Instead, Plaintiffs were provided with the Auditor-Controller’s “Direct Assessment
5 Manual.” This document does not provide for a public administrative hearing for claimants, an
6 exchange of information, testimony under oath, or findings of fact by a neutral. *See* Exhibit X.
7 Upon information and belief, the Direct Assessment Manual is not intended for use by the public
8 at all, but by the taxing agencies that submit direct assessments to the Auditor-Controller for
9 processing. *Id.* at ii.

10 106. Plaintiffs also were provided with an interrogatory response that the County
11 provided in another lawsuit, *Bermudez v. Pure Solar Co. et al* (19STCV21933), which stated:

12 [C]laims requesting cancellation, pursuant to Revenue and Taxation Code 4986,
13 of a County-PACE assessment are accepted for filing by the Auditor-Controller
14 (“A-C”). The A-C logs the cancellation claim and forwards it to the County’s
15 Internal Services Department (“ISD”). ISD reviews the cancellation claim to
16 determine a recommended action, and then communicates the recommended
17 action to the A-C. The A-C reviews the claim and recommended action to
18 determine whether satisfactory proof supports cancellation of the County-PACE
19 assessment pursuant to Revenue and Taxation Code 4986. If the claim is denied,
20 the A-C issues a denial letter notifying the claimant of the denial. If the claim is
21 approved, the A-C will cancel the assessment pursuant to the A-C’s authority
22 under Revenue and Taxation Code section 4986 and provide notice to the
23 claimant.

24 *See* Exhibit Y (at responses 9 and 10). This process does not provide for a public administrative
25 hearing for claimants, an exchange of information, testimony under oath, or findings of fact by a
26 neutral.

27 107. On April 1, 2020, Plaintiffs received an email from County Counsel containing
28 ISD’s recommendations (dated March 13, 2020) to the Auditor-Controller. ISD recommended
29 Plaintiff Allen Bowen’s cancellation claim be granted, but his claim for refund be denied. ISD
30 recommended denial of cancellation and refund for all other Plaintiffs. A copy of this letter is
31 attached hereto as Exhibit Z.

32 ///

1 108. Upon information and belief, the Auditor-Controller accepted ISD's
2 recommendations in full and did not conduct any independent investigation of Plaintiffs' claims.

3 109. Plaintiffs are informed and believe that cancellation of Plaintiff Bowen's PACE
4 assessment has been processed by the County.

5 110. Plaintiffs have exhausted the administrative process the County set forth for
6 Plaintiffs to follow, which was essentially an internal investigation and recommendation between
7 County agencies.

8 111. An internal investigation is not an adequate administrative remedy.

9 112. The County's process for reviewing Plaintiffs' cancellation claims is not an
10 adequate administrative remedy because, *inter alia*, there was:

- 11 a. No evidentiary hearing;
- 12 b. No presence of an impartial finder of fact;
- 13 c. No submission of briefing or argument;
- 14 d. No exchange of evidence;
- 15 e. No taking of testimony or cross-examination;
- 16 f. No clearly defined information about the procedural steps of the process,
17 either via statute or that was otherwise publicly available (even through
18 Plaintiffs' Public Record Act Requests);
- 19 g. No process, standard, or timeline for reconsideration or appeal;
- 20 h. No development of a factual record for review;
- 21 i. Evidence that this process was created *sui generis* to deal with Plaintiffs'
22 claims;⁵ and
- 23 j. The available administrative remedies explicitly do not provide for
24 classwide relief.

25
26
27 ⁵ In fact, the County has generally directed individuals with complaints about their PACE
28 assessments to file complaints with the Los Angeles Department of Business and Consumer
Affairs, not the Auditor-Controller. See Exhibits AA and BB (PACE Termination FAQs at
Question 6).

1 113. All named Plaintiffs have exhausted the administrative review process the County
2 applied to Plaintiffs' claims.

3 114. Exhaustion is not required for putative class members, but even if it were,
4 exhaustion would not be required for putative class members here because the process is
5 inadequate as a matter of law and Plaintiffs are not required to exhaust administrative remedies
6 that are inadequate.

7 115. Therefore, Plaintiffs' class claims are appropriately before the Court.

8 116. Even if the internal review and recommendation from ISD was an adequate
9 administrative remedy, Plaintiffs are informed and believe that sufficient numbers of homeowners
10 have had their PACE complaints investigated in some manner by ISD, such that a numerous class
11 of individuals who have exhausted their administrative remedies through the County's process
12 already exists.

13 **THE NAMED PLAINTIFFS**

14 **A. Plaintiff Reginald Nemore**

15 117. Plaintiff Reginald Nemore is a 60-year-old resident of Los Angeles County. At all
16 times relevant here, Mr. Nemore has owned the real property located at 657 E. Ladera Street in
17 Pasadena. According to the County Assessor's office, Mr. Nemore's home is less than 1,200
18 square feet.

19 118. Forced into early retirement by disability, Mr. Nemore spends most of his time
20 caring for his wife, who has Multiple Sclerosis. His income consists of Social Security Disability
21 Income (SSDI) of approximately \$1,241 a month.

22 119. On or about September 29, 2016, Mr. Nemore purportedly entered into a Renovate
23 America PACE assessment contract with the County. The contract covered the installation of
24 some solar panels. The cost of a typical solar installation for a medium-sized house (6kW) in
25 California ranges from \$12,000 to \$15,000. Renovate America's contractor charged Mr. Bowen
26 \$26,247 for the panels, roughly twice the typical price, even though his home is not large. To
27 secure repayment of that contract, the County recorded a PACE Lien on Mr. Nemore's property, a
28 certified copy of which is attached hereto as Exhibit R and incorporated herein by reference.

1 120. The PACE lien secures the \$26,247 that Renovate America's contractor charged
2 Mr. Nemore, plus \$4,000 in Renovate America fees and capitalized interest, plus another \$41,410
3 in interest to be paid over the 25 year life of the PACE loan, for a total of \$71,778 in payments to
4 the County. Even before Renovate America approved that PACE loan, Mr. Nemore's pre-existing
5 debt-to-income ratio was over 95%. His annual PACE assessment of \$2,871 represents 19% of
6 his annual SSI income. If Mr. Nemore wants to hold onto his home, he will have to find a way to
7 pay that assessment, every year, for the next 25 years.

8 121. On July 5, 2019, Mr. Nemore filed an administrative claim for cancellation and
9 refund of his PACE assessments with the Los Angeles County Assessment Appeals Board. The
10 Assessment Appeals Board failed to adjudicate his claims. Following an internal review by the
11 County's Internal Services Department, the County denied his claims.

12 **B. Plaintiff Violeta Senac**

13 122. Plaintiff Violeta Senac is a 90-year-old resident of Los Angeles County. At all
14 times relevant here, Ms. Senac has owned the real property located at 5755 Ensign Avenue in
15 North Hollywood. According to the County Assessor's office, Ms. Senac's home was built in
16 1938 and contains 947 square feet.

17 123. On or about May 19, 2016, Ms. Senac purportedly entered into a Renovate
18 America PACE assessment contract with the County. Ms. Senac was then 85 years old. She was
19 providing a home for her disabled adult daughters. Ms. Senac speaks limited English and has poor
20 eyesight. Her only income is her monthly Social Security check. When she purportedly entered
21 into the PACE financing agreement, she had less than \$700 in her bank account.

22 124. The PACE assessment contract covered the installation of one or more toilets,
23 windows, doors, and roofing material. Renovate America's contractor charged Ms. Senac
24 \$39,995. To secure repayment of that assessment contract, the County recorded a PACE Lien on
25 Ms. Senac's property, a certified copy of which is attached hereto as Exhibit S and incorporated
26 herein by reference.

27 125. In addition to the \$39,995 in Renovate America contractor charges, the PACE lien
28 secures \$3,000 in Renovate America fees and capitalized interest, plus another \$46,768 in interest,

1 all of which are to be paid over the 20-year life of the PACE loan, at the rate of \$4,518 per year,
2 for a total of \$90,361 in payments to the County.

3 126. When Ms. Senac purportedly entered into the financing agreement with the County,
4 her pre-existing debt-to-income ratio was approximately 135%. In other words, her monthly debt
5 obligations already exceeded her monthly income *before* she purportedly promised to pay the
6 County a Renovate America PACE assessment of \$4,518.05 per year. If Ms. Senac wanted to
7 continue to live in that house, and provide a home for her disabled daughters, she would have to
8 find a way to come up with that additional \$4,518.05, every year, for the next 20 years.

9 127. In March 2018, Ms. Senac paid off the outstanding principal balance of her
10 Renovate assessment, \$42,098.95, by obtaining a new reverse mortgage.

11 128. Ms. Senac presented a Claim for Damages to Person or Property to the County on
12 behalf of herself and others similarly situated on September 13, 2018. She amended her claim on
13 October 22, 2018. The County rejected the claim on December 7, 2018.

14 129. Ms. Senac filed an administrative claim for cancellation and refund of her PACE
15 assessments with the Los Angeles County Assessment Appeals Board on July 12, 2019. The
16 Assessment Appeals Board failed to adjudicate her claims. Following an internal review by the
17 County's Internal Services Department, the County denied her claims.

18 **C. Plaintiff Aurelia Millender**

19 130. Plaintiff Aurelia Millender is an 84-year-old resident of Los Angeles County. At
20 all times relevant here, Ms. Millender has owned the real property located at 2057 W. 71st Street
21 in Los Angeles. According to the County Assessor's office, Ms. Millender's home was built in
22 1929. It contains 1,446 square feet.

23 131. Ms. Millender's income consists of Social Security and Supplemental Security
24 Income, totaling less than \$1,000 a month. She also usually receives a few hundred dollars a
25 month from a family member. Her monthly income never exceeds \$1,350.

26 132. On or about August 31, 2016 and November 20, 2016, when she was 80 years old,
27 Ms. Millender purportedly entered into two Renovate America PACE assessment contracts with
28 the County. The first covered some exterior paint, which supposedly would lower the temperature

1 inside her house on hot days, and one replacement window. Renovate America's contractor
2 charged Ms. Millender \$18,951 for those items. The second contract covered roof shingles that
3 supposedly would also lower the summertime temperature inside her home. For that, the
4 Renovate America contractor charged her \$20,500. To secure repayment of these assessment
5 contracts, the County recorded two PACE Liens on Ms. Millender's property, certified copies of
6 which are attached hereto as Exhibits T and U and incorporated herein by reference.

7 133. In addition to the \$39,451 in Renovate America contractor charges, the PACE
8 Liens secure \$5,500 in Renovate America fees and capitalized interest, plus another \$49,900 in
9 interest, all of which are to be paid over the 20-year life of the PACE Loans, at the rate of
10 \$4,737.36 per year, for a total of approximately \$94,747 in payments to the County.

11 134. The first of her two PACE Liens caused Ms. Millender's debt-to-income ratio to
12 increase to approximately 48%, and left her with residual income of less than \$700 a month to pay
13 for food, utilities, transportation, etc. Ms. Millender's second PACE Lien caused her debt-to-
14 income ratio to increase to approximately 64%, and left her with residual income of less than \$500
15 per month. Ms. Millender has noticed no meaningful difference in the temperature inside her
16 home from the \$39,451 in wall and roof paint that Renovate America's contractor charged her, or
17 for the \$4,737.36 per year she will have to pay the County until 2036 to stay in her house.

18 135. Ms. Millender has a reverse mortgage, and she is behind on her payments as a
19 result of the additional PACE liens, and she is at risk of foreclosure. The only thing currently
20 preventing foreclosure is that she has secured a temporary at-risk extension from her mortgage
21 servicer based on her age and poor health.

22 136. On July 5, 2019, Ms. Millender filed an administrative claim for cancellation and
23 refund of her PACE assessments with the Los Angeles County Assessment Appeals Board. The
24 Assessment Appeals Board failed to adjudicate her claims. Following an internal review by the
25 County's Internal Services Department, the County denied her claims.

26 **D. Plaintiff Allen Bowen**

27 137. Plaintiff Allen Bowen is a 72-year-old resident of Los Angeles County. At all
28 times relevant here, Mr. Bowen has owned the real property located at 2001 W. 78th Street in Los

1 Angeles. According to the County Assessor's office, Mr. Bowen's home was built in 1927 and
2 contains 1,534 square feet.

3 138. Mr. Bowen is a United States Army veteran and retired United States Postal
4 Service employee. He receives a pension of \$2,324 and receives an additional \$217 per month in
5 Social Security retirement benefits. On this fixed income, Mr. Bowen supports himself and his
6 teen-aged son.

7 139. On or about May 24, 2017, when Mr. Bowen was 69 years old, he purportedly
8 entered into a Renovate America PACE assessment contract with the County. The contract
9 covered the installation of solar panels and windows for his house. Despite the modest size of Mr.
10 Bowen's home, the Renovate America contract charged him \$39,800 for the panels and windows.
11 To secure repayment of that assessment contract, the County recorded a PACE Lien on Mr.
12 Bowen's property, a certified copy of which is attached hereto as Exhibit V and incorporated
13 herein by reference.

14 140. The PACE Lien covers the \$39,800 in contractor charges, plus more than \$5,000 in
15 Renovate America fees and capitalized interest, plus another \$10,330 in interest over the next five
16 years, for a total of \$51,658 in payments to the County. All of that requires Mr. Bowen to make a
17 \$10,331 annual PACE Loan payment to the County, on an annual income from his pension and
18 Social Security of about \$30,500. The PACE Loan resulted in an increase in Mr. Bowen's debt-
19 to-income ratio from less than 25% to over 60%. His PACE assessment payment was one-third of
20 his annual income, income he had intended to spend on traveling to visit family in his hard-earned
21 retirement.

22 141. On July 5, 2019, Mr. Bowen filed an administrative claim for cancellation and
23 refund of his PACE assessments with the Los Angeles County Assessment Appeals Board. The
24 Assessment Appeals Board failed to adjudicate his claims. Following an internal review by the
25 County's Internal Services Department, the County cancelled Mr. Bowen's PACE assessment
26 effective for the 2020-2021 tax year. The County denied Mr. Bowen's claim for refund.

27 142. All Plaintiffs had a sharp increase in their property tax bills as a result of their
28 annual PACE obligations. The County collected payments for PACE assessments, either directly

1 from each Plaintiff or from mortgage lenders to that Plaintiff, who advanced such payments on
2 behalf of that Plaintiff and then charged that advance to the Plaintiff, typically through an escrow
3 account.

4 143. The County remitted and continues to remit some or all of the PACE assessments it
5 collects to Renovate America as required by the terms of their Administration Contract.

6 **CLASS ACTION ALLEGATIONS**

7 144. Plaintiffs bring this action pursuant to Code of Civil Procedure section 382 as a
8 class action, on behalf of themselves and all others similarly situated, for the purpose of asserting
9 the claims alleged in this Complaint on a common basis.

10 145. The “**PACE Class**” consists of all homeowners who purportedly entered into a
11 Renovate America HERO assessment contract with Los Angeles County between March 1, 2015
12 and March 31, 2018, where that assessment contract has been recorded as a lien against the
13 homeowner’s real property. All named Plaintiffs are members of the PACE Class.

14 146. Every putative member of the PACE Class has been harmed, is facing a threatened
15 harm that is certainly impending, or faces a substantial risk that harm will occur in the future.
16 Examples of such harms include, but are not limited to: (1) being subjected to a predatory loan
17 which they cannot afford to repay; (2) paying unconscionably high interest rates; (3) threats of
18 foreclosure by Defendants or class members’ mortgage servicers; (4) actual foreclosure by
19 Defendants or class members’ mortgage servicers; (5) unjust encumbrances on their real property;
20 (6) being unable to secure additional financing due to their PACE Liens; and (7) having
21 “improvements” installed that are unnecessary, shoddy, or otherwise incomplete.

22 147. The “**Ability to Pay Subclass**” consists of members of the PACE Class for whom
23 Renovate America did not perform a “reasonable good faith determination” of the homeowner’s
24 “reasonable ability to pay” the PACE assessment. All named Plaintiffs are members of the Ability
25 to Pay Subclass, as Renovate America never made good faith determinations of their abilities to
26 repay their PACE assessments.

27 148. A “reasonable good faith determination” of a homeowner’s “reasonable ability to
28 pay” is defined as codified in California Finance Code § 22687.

1 149. The “**DTI Subclass**” consists of members of the PACE Class where either (a) the
2 homeowner’s debt-to-income ratio (“DTI”), at the time the contract was purportedly executed, and
3 including the homeowner’s annual PACE obligation, was 50% or more, or (b) the homeowner’s
4 DTI, at the time the contract was purportedly executed, and including the homeowner’s annual
5 PACE obligation, was less than 50%, but left the household with residual monthly income of less
6 than \$1,000 for one person, or \$1,000 plus \$500 for each additional household member.

7 150. All named Plaintiffs are members of the DTI Subclass because their DTI ratios,
8 including the homeowner’s annual PACE obligation, equaled or exceeded 50% at the time their
9 PACE assessment contract was executed, or their DTI was less than 50%, but left the household
10 with residual monthly income of less than \$1,000 for one person, or \$1,000 plus \$500 for each
11 additional household member.

12 151. The “**Elder Subclass**” consists of members of the PACE Class who were 65 years
13 old or older when they purportedly entered into the PACE loan agreement. Plaintiffs Senac,
14 Millender, and Bowen (collectively, the “Elder Plaintiffs”) bring this action on behalf of the Elder
15 Subclass.

16 152. The “**Predatory Loan Subclass**” consists of members of the PACE Class who
17 were facially unable to afford their PACE obligations—as determined by established methods of
18 consumer protection for property-secured financing—at the time they purportedly entered into
19 their assessment contracts.

20 153. The “**Mortgage Subclass**” consists of members of the PACE Class who had a
21 federally-backed mortgage at the time the homeowner purportedly entered into the assessment
22 contract.

23 154. The “**Language Subclass**” consists of members of the PACE Class who
24 purportedly signed an English language assessment contract and who had limited English
25 proficiency.

26 155. Defendants and their directors, officers, employees, and affiliates are excluded
27 from the aforementioned classes and subclasses.

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1 156. **Ascertainable**: Plaintiffs are informed and believe, and upon such information and
2 belief allege, that individuals who fall within these classes are ascertainable and can be identified
3 with reasonable efficiency. The class definitions are objective. The exact number and identities
4 of the Class Members are unknown at this time, but may be ascertained through discovery.

5 157. **Community of Interest**: The questions of law and fact common to the Class
6 Members sufficiently predominate over any questions affecting only individual members as to
7 create a single community of interest between them. The common questions in this case are
8 capable of having common answers. If Plaintiffs' claims regarding Defendants' conduct are
9 accurate, Plaintiffs and Class Members will have identical claims capable of being efficiently
10 adjudicated and administered in this case.

11 158. Among the questions of law and fact common to Plaintiffs and all Class Members
12 are:

13 a. Whether Plaintiffs and Class Members are third-party beneficiaries of the
14 Administration Contract;

15 b. Whether Defendant Renovate America breached its duty in the
16 Administration Contract to "ensure best in class protections for property owners from
17 actions such as, including but not limited to, predatory lending" by, for example, failing to
18 consider ability to repay the PACE Liens;

19 c. Whether Defendant Renovate America's breaches of its contractual
20 obligations under the Administration Contract impaired or reduced the value of Class
21 Members' properties subject to PACE Liens;

22 d. Whether the Assessment Contracts or any of their terms are unconscionable
23 and should not be enforced;

24 e. Whether Defendant Renovate America's failure to provide essential
25 consumer protections to Class Members constitutes an "unfair" practice under Business &
26 Professions Code sections 17200, et seq.;

27 f. Whether Defendants' failure to provide adequate consumer protection
28 measures has subjected Class Members to a continuing risk of significant harm;

1 g. Whether Class Members—(excepting Mr. Bowen)—are entitled to an order
2 declaring the liens and assessments recorded against their properties to secure the PACE
3 loans at issue herein to be cancelled;

4 h. Whether Class Members are entitled to restitution of amounts paid to the
5 County, or other damages, related to the PACE program; and

6 i. Whether Class Members are entitled to specific performance of the
7 Administration Contract.

8 159. Among the questions of law and fact common to the Language Subclass are:

9 a. Whether Defendant Renovate America breached its duty in the
10 Administration Contract to provide assistance in multiple languages, other than and in
11 addition to English, to ensure consumers understand the terms of their financing in their
12 native language;

13 160. Among the questions of law and fact common to the Elder Subclass are:

14 a. Whether Defendant Renovate America breached its duty in the
15 Administration Contract to provide “special” or “heightened” protection for senior citizens
16 to confirm they clearly understand the terms of the financing;

17 b. Whether Defendants Renovate America and the County took, secreted,
18 appropriated, obtained, and/or retained the property of the elder Plaintiffs and the Elder
19 Subclass Members;

20 c. Whether Defendants Renovate America and the County assisted in taking,
21 secreting, appropriating, obtaining, and/or retaining the property of elder Plaintiffs and the
22 Elder Subclass Members;

23 d. Whether Defendants Renovate America and the County knew or should
24 have known that Renovate America’s breaching its agreement in the Administration
25 Contract to provide “special” or “heightened” protection for senior citizens, would be
26 likely to be harmful to the Elder Subclass Members;

27 e. Whether Defendants Renovate America and the County knew or should
28 have known that elder persons are likely to be harmed if credit is extended to them without

1 a reasonable evaluation of the elder person's ability to repay;

2 f. Whether the taking of a property interest in the homes of the Elder Plaintiffs
3 and Elder Subclass Members was "unlawful" under Business & Professions Code sections
4 17200, *et seq.*

5 161. **Adequate Representation**: Plaintiffs are representatives who will fully and
6 adequately assert and protect the interests of the Class Members, and have retained competent and
7 adequate legal counsel experienced in class action and complex litigation. Plaintiffs are adequate
8 representatives and will fairly and adequately protect the interests of the Class Members.
9 Plaintiffs' claims are typical of the claims of the classes and subclasses, as they are all based on
10 the same factual and legal theories, namely, the same wrongful conduct by Defendants, including
11 conduct by others that aided and abetted such conduct.

12 162. **Substantial Benefit**: A class action is superior to other available methods for the
13 fair, just, and efficient adjudication of the claims asserted herein and will provide a substantial
14 benefit to the court and the litigants. Joinder of all Class Members is impracticable and, for
15 financial and other reasons, it would be impractical for individual members to pursue separate
16 claims. The prosecution of separate actions by individual members would create a risk of
17 inconsistent or varying adjudications, which would establish incompatible standards of conduct
18 for the parties opposing these classes and subclasses. Such incompatible standards of conduct and
19 varying adjudications on the same essential facts, proof, and legal theories would also create and
20 allow the existence of inconsistent and incompatible rights within these classes and subclasses.
21 The prosecution of separate actions by individual members would unduly burden the courts.

22 163. Plaintiffs anticipate no difficulty in the management of this case as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **Financial Elder Abuse**

3 **[Welfare & Institutions Code Section 15657.5]**

4 **(By the Elder Subclass Against Renovate America)**

5 164. The Elder Plaintiffs repeat and re-allege the allegations of paragraphs 1 through
6 163 as though they were fully set forth herein.

7 165. The Elder Plaintiffs and Elder Subclass Member were 65 years of age or older at all
8 times relevant and are thus “elders” under Welfare & Institutions Code section 15610.27.

9 166. Because Defendant Renovate America’s application form for the County’s PACE
10 program requires disclosure of the borrower’s birthdate, at all times material Defendant Renovate
11 America knew or should have known that the Elder Plaintiffs and the Elder Subclass were over the
12 age of 65.

13 167. By failing to implement best in class consumer protections and special protections
14 for seniors as required by Renovate America’s Administration Contract with the County, and by
15 originating loans for seniors, secured by a first-priority lien on their homes, without first
16 confirming that the borrower had the ability to make the semi-annual loan repayments, Defendant
17 Renovate America has taken, secreted, appropriated, obtained, and/or retained the property of the
18 Elder Subclass Members for a wrongful use.

19 168. Defendant Renovate America has also assisted Defendant County of Los Angeles
20 in taking, secreting, appropriating, obtaining and/or retaining the property of the Elder Plaintiffs
21 and Elder Subclass Members for a wrongful use. Defendant Renovate America’s assistance
22 includes but is not limited to:

- 23 a. Recruiting and ostensibly training home improvement contractors to act as
24 *de facto* mortgage brokers to sell PACE-financed home improvements to homeowners;
- 25 b. Selecting what products and services are actually approved for PACE
26 financing;
- 27 c. Sending and receiving contracts, including unconscionable Assessment
28 Agreements;

- 1 d. Checking properties' equity, as well as homeowners' property tax payment
2 history;
3 e. Recording PACE Liens; and
4 f. Servicing PACE Liens.

5 169. Defendant Renovate America knew or should have known that the Elder Subclass
6 Members were likely to be harmed by these activities because:

7 a. The Department of Energy and other federal and local agencies made public
8 statements about the potential dangers of implementing a PACE program without an
9 ability to pay analysis;

10 b. The Administration Contract required best in class consumer protections
11 and special protections for seniors, and the members of the Elder Subclass were especially
12 vulnerable to financial abuse, such as by predatory lending;

13 c. Homeowners were unable to negotiate any of the terms and conditions of
14 their Assessment Agreement with the County, such that they were contracts of adhesion
15 with unjustifiably one-sided and harsh terms;

16 d. The PACE loans it was originating without regard to ability to pay would be
17 enforceable by foreclosure if the Elder Plaintiff missed a payment;

18 e. Loans made without regard to ability to pay put Elder Plaintiffs and
19 Subclass Members at high risk of foreclosure or substantial loss or encumbrance of
20 property essential to their health and welfare; and

21 f. The high risk of foreclosure or substantial loss or encumbrance of property
22 essential to health and welfare created by the County's wrongful acts were likely to cause
23 mental suffering to the Elder Plaintiffs and the Elder Subclass Members

24 170. As a result of Renovate America's wrongful acts, the Elder Plaintiffs and the Elder
25 Subclass Members have been deprived of property rights insofar as they have made payments on
26 financing extended without regard to their ability to pay; their homes are encumbered by first-
27 priority PACE Liens that reduce their home equity and salability, can be foreclosed by the County,
28 and may subject them to foreclosure on pre-existing conventional mortgages or reverse mortgages.

1 171. Defendant Renovate America has also received substantial fees and commissions
2 from Elder Plaintiffs and the Elder Subclass Members as a result of its activities in originating
3 PACE Liens. On information and belief, Defendant Renovate America will continue to receive
4 additional fees and commissions for the life of each PACE Lien, which are paid by homeowners in
5 the form of finance charges.

6 172. Renovate America's conduct, as alleged herein, constitutes "financial abuse," as
7 defined in Welfare & Institutions Code section 15610.30.

8 173. Under Welfare & Institutions Code section 15657.5, Renovate America is liable for
9 compensatory damages, reasonable attorneys' fees and costs, and all other remedies otherwise
10 provided by law, including cancellation.

11 174. The actions taken by Renovate America set forth above were in all respects
12 reckless, oppressive, fraudulent and malicious.

13 175. Under Civil Code section 3345, Renovate America is liable for treble damages and
14 penalties because: (a) it knew or should have known that its conduct was directed as to an elder
15 person; (b) its conduct caused elder persons to suffer encumbrance, or substantial loss of property
16 essential to their health and welfare; (c) Elder Plaintiffs and the Elder Sub-Class Members are
17 senior citizens who are more vulnerable than other members of the public to Defendant Renovate
18 America's conduct because of their age, impaired understanding, impaired health, or restricted
19 mobility; and (d) Elder Plaintiffs and the Elder Sub-Class Members actually suffered substantial
20 economic harm resulting from Renovate America's conduct.

21 **SECOND CAUSE OF ACTION**

22 **Financial Elder Abuse**

23 **[Welfare & Institutions Code Section 15657.5]**

24 **(By the Elder Subclass Against the County of Los Angeles)**

25 176. The Elder Plaintiffs repeat at re-allege the allegations of paragraph 1 through 163
26 as though they were fully set forth herein.

27 177. The Elder Plaintiffs and Elder Subclass Member were 65 years of age or older at all
28 times relevant and are thus "elders" under Welfare & Institutions Code section 15610.27.

1 178. Because Defendant Renovate America's application form for the County's PACE
2 program requires disclosure of the borrower's birthdate, at all times material the County knew or
3 should have known that the Elder Plaintiffs and the Elder Subclass were over the age of 65.

4 179. By failing to enforce the best in class consumer protections and special protections
5 for seniors required by its Administration Contract with Renovate America, by utilizing
6 unconscionable and one-sided contracts of adhesion, and by executing the Assessment
7 Agreements that are recorded against the property of each Elder Subclass Member, on the basis of
8 which Elder Subclass Members' homes can be foreclosed (or that will trigger foreclosures by
9 conventional and reverse mortgage servicers), without regard to the Elders' ability to pay,
10 Defendant County of Los Angeles has taken, secreted, appropriated, obtained and/or retained the
11 property of the Elder Subclass Members for wrongful use.

12 180. Defendant County of Los Angeles has also assisted Defendant Renovate America
13 in taking, secreting, appropriating, obtaining and/or retaining the property of the Elder Subclass
14 Members for wrongful use. As described more fully above, Defendant County of Los Angeles'
15 assistance includes but is not limited to:

- 16 a. Permitting Defendant Renovate America to originate financing without
17 reference to the borrowers' ability to make the semi-annual payments;
- 18 b. Promoting the County's PACE program and the County's relationship with
19 Renovate America;
- 20 c. Failing to oversee Defendant Renovate America's activities or to provide
21 oversight upon learning that financially vulnerable elders are being taken advantage of
22 through Defendant Renovate America's administration of the PACE program;
- 23 d. Failing to meaningfully evaluate Renovate America's performance as
24 required by sections 13.2.6 and 8.15 of the Administration Contract. See Ex. F at Ex. A,
25 Statement of Work;
- 26 e. Failing to enforce the provisions of its Administration Contract with
27 Renovate America that require best in class consumer protections and special protections
28 for seniors; and

1 f. Recording PACE liens against Elder Subclass Members.

2 181. The County knew or should have known that the Elder Subclass Members were
3 likely to be harmed by these activities because:

4 g. The Department of Energy and other federal and local agencies made public
5 statements about the potential dangers of implementing a PACE program without an
6 ability to pay analysis;

7 h. The County's Administration Contract required Renovate America to
8 provide best in class consumer protections and special protections for seniors, and the
9 Elder Plaintiffs and members of the Elder Subclass were especially vulnerable to financial
10 abuse, such as by predatory lending;

11 i. Homeowners were unable to negotiate any of the terms and conditions of
12 their Assessment Agreement with the County, such that they were contracts of adhesion
13 with unjustifiably one-sided and harsh terms;

14 j. The Assessment Agreements would be recorded as a first priority lien and
15 encumbrance on the homeowner's property, enforceable by foreclosure if the elder missed
16 a payment; and

17 k. Loans made without regard to ability to pay put Elder Plaintiffs and Sub-
18 Class Members at high risk of foreclosure or substantial loss or encumbrance of property
19 essential to their health and welfare.

20 182. As a result of Renovate America's wrongful acts, the Elder Plaintiffs and the Elder
21 Subclass Members have been deprived of property rights insofar as they have made payments on
22 financing extended without regard to their ability to pay; their homes are encumbered by first-
23 priority PACE Liens that reduce their home equity and salability, can be foreclosed by the County,
24 and may subject them to foreclosure on pre-existing conventional mortgages or reverse mortgages.

25 183. The County of Los Angeles has also received "administration" fees from Elder
26 Plaintiffs and the Elder Subclass Members as a result of its activities in collecting PACE Liens
27 and administering the PACE program. On information and belief, the County of Los Angeles will
28 continue to receive additional fees for the life of each PACE Lien. The County's conduct, as

1 alleged herein, constitutes “financial abuse,” as defined in Welfare & Institutions Code section
2 15610.30.

3 184. Under Welfare & Institutions Code section 15657.5, the County is liable for
4 equitable cancellation of the Assessment Agreements and any obligations associated with those
5 agreements, reasonable attorneys’ fees and costs, and all other equitable remedies otherwise
6 provided by law.

7 185. To the extent remedies sought from the County require presentation of a claim
8 pursuant to the Government Claims Act, Plaintiff Senac presented a claim to the County of Los
9 Angeles, Board of Supervisors on behalf of herself and all others similarly situated on September
10 13, 2018, amended October 22, 2018. The County rejected the claim on December 7, 2018.

11 **THIRD CAUSE OF ACTION**

12 **Breach of Contract – Third Party Beneficiary**

13 **[Civil Code Section 1559]**

14 **(By All Classes Against Defendant Renovate America)**

15 186. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
16 they were fully set forth herein.

17 187. The County and Renovate America have a valid contract that has not been
18 rescinded. See Ex. F.

19 188. By the terms of this contract the County allowed Renovate America to administer
20 the County’s PACE program, and obtain fees and interest from property owners who utilize the
21 PACE program, and Renovate America agreed to implement “Consumer Protection Measures” for
22 the County’s property owners, including “best in class” protections against predatory lending and
23 “special protections” for seniors. See Ex. F at Ex. A, Statement of Work § 5.1.

24 189. Plaintiffs and Class Members, as property owners who utilized the PACE program,
25 are express and intended third party beneficiaries of these and the related “Consumer Protection
26 Measures” provisions of the Administration Contract.

27 190. As express and intended beneficiaries, Class Members were entitled to the benefits
28 and protections of these promises.

1 191. Renovate America breached the Administration Contract by, among other things,
2 failing to provide minimum protections against predatory lending, as evidenced by the fact that
3 Renovate America’s underwriting process did not assess the borrower’s ability to repay the loan.

4 192. Renovate America breached other obligations owed to Plaintiffs and Class
5 Members under the Administration Contract, including but not limited to:

6 a. Its promise to provide “special” or “heightened” protection for seniors, such
7 as members of the Elder Subclass;

8 b. Its promise to provide language assistance to non-native English speakers,
9 such as members of the Language Subclass;

10 c. Failing to adequately vet Renovate Registered Contractors so as to prevent
11 them from installing on Plaintiffs’ and Class Members’ property unnecessary, incomplete,
12 or otherwise faulty “improvements;” and

13 d. Failing to screen and monitor its Registered Contractors in accordance with
14 its own policies, and as required by the Administration Contract to protect Class Members
15 from unscrupulous contractors.

16 193. On information and belief, Defendant Renovate America has charged, and will
17 continue to receive, fees and commissions for the life of each PACE Lien, which commissions are
18 paid by homeowners in the form of interest and finance charges.

19 194. Renovate America’s breaches of the Administration Contract have proximately
20 caused damage to Plaintiffs and Class Members. Such damages include, but are not limited to: (a)
21 the loss of funds they have paid in connection with PACE loans, including for fees, interest, and
22 assessment payments, (b) the increased risk of foreclosure, (c) the imposition of barriers to
23 refinancing or obtaining other debt secured by liens on their home, such as home mortgages or
24 reverse mortgages, (d) the reduced value of their homes, and (e) encumbrances that reduce the
25 equity in their homes.

26 195. Plaintiffs and Class Members have been damaged in an amount subject to proof at
27 trial substantially in excess of the jurisdictional minimum of this court but in an amount estimated
28 to be in the hundreds of millions of dollars, given the number of PACE participants, the value of

1 their homes, the total amount of the PACE Liens, and the diminution in values sustained.

2 196. Plaintiffs and Class Members are entitled to the consumer protections included in
3 the Administration Contract for their benefit, through specific performance or other remedies.

4 **FOURTH CAUSE OF ACTION**

5 **Declaratory Relief - Unlawful Contract As A Matter of Law**

6 **[Civil Code Section 1670.5 et seq.]**

7 **(By All Classes Against Defendant County of Los Angeles)**

8 197. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
9 they were fully set forth herein.

10 198. Code of Civil Procedure § 1060 permits any party to seek a declaration or
11 determination of validity of any written instrument.

12 199. Civil Code section 1670.5(a) permits a court to refuse to enforce a contract that was
13 unconscionable at the time it was made.

14 200. The County of Los Angeles requires Plaintiffs and all Class Members to sign an
15 Assessment Agreement, which is subsequently recorded as a lien against the property, and forms
16 the basis for the levy of additional assessments for the duration of the PACE loan term.

17 201. Financing alternatives on comparable terms, including “no money down” for green
18 energy improvements, do not exist.

19 202. The Assessment Agreements are contracts of adhesion between parties of vastly
20 unequal bargaining power.

21 203. Plaintiffs and Class Members are individual homeowners in the County of Los
22 Angeles. The County of Los Angeles is a local government with police powers.

23 204. The Assessment Agreements between the County and the Plaintiffs and Class
24 Members are standardized, uniform, lengthy legal documents where Plaintiffs and Class Members
25 had no opportunity to negotiate any individual term and, thus, form a classic “take-it-or-leave-it”
26 situation.

27 205. The Assessment Agreements were presented to Plaintiffs and Class Members by
28 Renovate Registered Contractors, who had a financial stake in Plaintiffs and Class Members

1 signing up for PACE-financed home improvements.

2 206. The signatures of the Plaintiffs are not on the same page as any part of the
3 Assessment Agreement, nor are the "Exhibits" incorporated by reference identified individually.

4 207. The Assessment Agreements contain surprising terms which are hidden in the
5 middle of the document, with no change in font or format to highlight them, including waiver of
6 all possible claims, but simultaneously, an indemnification clause forcing Plaintiffs and Class
7 Members to pay for any claims they do bring in any way "related" to the subject matter of the
8 Assessment Agreement.

9 208. The waiver provision itself is over one full page and written in "legalese."

10 209. The waiver also has the unlawful objective of exempting the County and its agents
11 and investors from responsibility for their own fraud, willful injury to person or property, or
12 violations of law, whether willful or negligent, in violation of Civil Code section 1668.

13 210. The terms of the Assessment Agreements are unjustifiably one-sided and create
14 overly harsh results for the Plaintiffs and Class Members, who had unequal bargaining power in
15 the transaction to begin with.

16 211. In exchange for financing (at above-market interest rates), homeowners must agree
17 to a first-priority lien encumbering their property for the loan term, enforceable by foreclosure
18 after one missed payment. The County is fully protected from loss in the event of the
19 homeowner's non-payment.

20 212. Given this high level of protection for the County and its investors, there is no
21 reasonable justification for obtaining an overbroad waiver from the Plaintiffs and Class Members
22 that prevents Plaintiffs and Class Members from making any claim challenging their assessment
23 obligations or the PACE program generally, even if those claims were to involve intentional tort,
24 fraud, forgery or violations of law by the County or the extensive network of agents it has engaged
25 to administer its PACE program.

26 213. In addition, the County is asking Plaintiffs and Class Members to waive the
27 statutory protection of Civil Code section 1542, which is a statutory consumer protection that
28 exempts future and unknown claims from a general release.

1 214. These provisions lead to the overly harsh result of a Government entity with the
2 power to take one's home through foreclosure, not only insulating itself from any possible
3 violation of law, known or unknown, but requiring Plaintiffs and Class Members to pay for any
4 attempt to enforce the legal rights and remedies that would be available to them in any other form
5 of financing.

6 215. In light of the "best in class protections" the County vowed to ensure for Plaintiffs
7 and Class Members and participating homeowners, and the fact that this is a government program
8 intended to help needy homeowners, the terms and effect of the Assessment Agreement shock the
9 conscience.

10 216. The Assessment Agreement terms and their impact are alike for all Plaintiffs and
11 Class Members, all of whom were offered financing on the same terms of no money down and
12 without regard to ability to pay.

13 217. The unconscionable provisions of the Assessment Agreement are not severable,
14 and the Assessment Agreement is permeated with unconscionability. There is more than one
15 unconscionable term and there is no single provision that may be struck to remove the taint of
16 unconscionability from the contract.

17 218. Plaintiffs are entitled to a declaration that the Assessment Agreements are unlawful
18 and not enforceable under Civil Code section 1670.5(a). In the alternative, Plaintiffs are entitled to
19 a declaration that the waiver and indemnification provisions in the Assessment Agreements are
20 unlawful and not enforceable under Civil Code section 1670.5(a).

21 **FIFTH CAUSE OF ACTION**

22 **Declaratory Relief - Unlawful Contract as Against Public Policy**

23 **[Civil Code Section 1668]**

24 **(By All Classes Against Defendant County of Los Angeles)**

25 219. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
26 they were fully set forth herein.

27 220. Code of Civil Procedure section 1060 permits any party to seek a declaration or
28 determination of validity of any written instrument.

1 221. Civil Code section 1668 makes contracts that, directly or indirectly, exempt a
2 contracting party from responsibility for their own willful or negligent violations of law, against
3 policy of the law.

4 222. The County of Los Angeles, a public entity, elected to create a PACE program to
5 provide financing for home improvements to County homeowners.

6 223. The County made PACE available to any member of the public who met certain
7 minimal standards such as home ownership, and being current on mortgage and tax payments.

8 224. As a condition of obtaining PACE financing, the County of Los Angeles required
9 Plaintiffs and all Class Members to sign a standardized Assessment Agreement, which terms were
10 drafted by the County and PACE participants had no opportunity to negotiate; they could only
11 “take it or leave it.”

12 225. The Assessment Agreement contains an overbroad waiver, riddled with legalese,
13 that insulates the County and its bond purchasers from all consequences of its conduct. This
14 waiver is not limited to ordinary negligence, but purports to exculpate the County from any
15 conduct related to the Assessment Agreements whatsoever.

16 226. The Assessment Agreement also contains an indemnification provision, riddled
17 with legalese, that further requires the Plaintiffs and Class Members to bear the cost to the County
18 and its bond purchasers of any challenge to their conduct, whether that conduct be fraudulent,
19 willful injury to person or property, or a willful or negligent violation of law. The Plaintiffs and
20 Class Members had no control or negotiating power over who the County’s bond purchasers were,
21 or the terms of those investment agreements.

22 227. The Assessment Agreements do not require the County to adhere to even a minimal
23 standard of care in contracting with the Plaintiffs and Class Members, and illegally exculpate the
24 County from compliance with current and future statutory and regulatory violations, whether
25 willful or negligent, as well as insulate them from potential liability for gross negligence and
26 willful injury to person or property.

27 228. As alleged above, and in Count II, the County directly, or by assisting Renovate
28 America and its agents, violated the Elder Abuse Statute, Welfare & Institutions Code sections

1 15600, et seq., in its administration of its PACE program.

2 229. These waiver and indemnification provisions serve only the needs of the County
3 and their bond purchasers and, to the extent they attempt to shield the County for liability for
4 willful or negligent violations of law, are invalid on their face.

5 230. Plaintiffs are entitled to a declaration that the Assessment Agreements are unlawful
6 and unenforceable under Civil Code section 1668. In the alternative, Plaintiffs are entitled to a
7 declaration that the waiver and indemnification provisions of the Assessment Agreements are
8 unlawful and unenforceable under Civil Code section 1668.

9 **SIXTH CAUSE OF ACTION**

10 **Violation of California's Statutory Unfair Competition Law**

11 **[Business & Professions Code Sections 17200 et seq.]**

12 **(By All Classes Against Defendant Renovate America)**

13 231. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
14 they were fully set forth herein.

15 232. Business & Professions Code sections 17200 et seq., also known as California's
16 Unfair Competition Law, prohibits any "unlawful, unfair or fraudulent business act or practice."

17 233. Renovate America has violated, and continues to violate, section 17203's
18 prohibition against engaging in "unlawful" acts or practices by (a) violating Welfare & Institutions
19 Code section 15657.5, as described above.

20 234. Renovate America has violated, and continues to violate, section 17203's
21 prohibition against "unfair" acts or practices by the following acts:

22 a. Breaching its duties to Plaintiffs and Class Members under the
23 Administration Contract;

24 b. Failing to screen and monitor its Registered Contractors in accordance with
25 its own policies, and as required by the Administration Contract to protect Class Members
26 from unscrupulous contractors;

27 c. Allowing Class Members to be victimized by unscrupulous contractors;

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1 d. Charging an above-market rate of interest on PACE Liens and a rate of
2 interest in excess of the risk of return of principal;

3 e. Encouraging predatory lending by determining eligibility for PACE without
4 consideration of the Class Member's ability to repay the PACE Lien;

5 f. Failing to adequately monitor PACE applications for suspect or
6 questionable data (e.g., fake email addresses, obviously inaccurate financial information,
7 etc.) so that Plaintiffs and Class Members were not so easily defrauded and taken
8 advantage of;

9 g. Failing to adequately vet Renovate Registered Contractors so as to prevent
10 unscrupulous contractors from getting easy access to Plaintiffs' and Class Members'
11 homes and sensitive personally identifying information (such as social security numbers
12 and financial information);

13 h. Encouraging predatory lending by informing its Registered Contractors how
14 much funding Class Members qualified for based on the equity in their home;

15 i. Failing to provide assistance in multiple languages, other than and in
16 addition to English, to ensure homeowners understood the terms of their financing;

17 j. Failing to adequately inform elder homeowners of the potential risks in
18 taking on a PACE Lien with an existing federally-backed mortgage; and

19 k. Facilitating and participating in the County's use of unlawful contracts.

20 235. As a result of Renovate America's business acts and practices, Plaintiffs and Class
21 Members have incurred actual financial losses and injuries including first-priority PACE Liens on
22 their homes that require payment and may trigger foreclosure by the County or by pre-existing
23 conventional and reverse mortgage lenders.

24 236. Plaintiffs and Class Members are entitled to an order enjoining Renovate America
25 from continuing to collect excessive fees and interest, to enjoy the benefits of having a "super
26 priority" lien, and to otherwise engage in the acts and practices alleged herein that continue in
27 spite of the program's end.

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1 237. Plaintiffs and Class Members are also entitled to restitution of all monies paid by
2 them in connection with the PACE program, including PACE program and loan fees and all
3 assessments they have paid.

4 **SEVENTH CAUSE OF ACTION**

5 **Cancellation of Taxes**

6 **[Revenue & Tax Code Section 4986]**

7 **(By All Classes Against Defendant County of Los Angeles)**

8 238. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
9 they were fully set forth herein.

10 239. Section 4986, subdivision (a) of the Revenue & Tax Code provides that “[a]ll or
11 any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof,
12 be cancelled by the auditor if it was levied or charged ... illegally.”

13 240. As more fully described above, and in Count II, the County committed financial
14 elder abuse within the meaning of Welfare & Institutions Code sections 15657.5 and 15610.30, by
15 extending financing secured by a first priority lien on the elders’ property without first confirming
16 that the elders could afford to pay, and operating the County’s PACE program without enforcing
17 or implementing consumer protections or special protections promised to seniors. The County
18 County’s levy and charge of taxes and fees against the Elder Plaintiffs and Elder Subclass
19 Members in the form of special assessments is therefore illegal, and the taxes (with any associated
20 penalties or costs), must be cancelled.

21 241. As more fully described above, and in Count IV, the County’s Assessment
22 Agreements are unlawful and unenforceable contracts within the meaning of Civil Code section
23 1670.5 et seq. The County’s levy and charge of taxes and fees against all Plaintiffs and Class
24 Members in the form of special assessments is therefore illegal, and the taxes (with any associated
25 penalties or costs), must be cancelled.

26 242. As more fully described above, and in Count V, the County’s Assessment
27 Agreements are unlawful and unenforceable contracts within the meaning of Civil Code section
28 1668. The County’s levy and charge of taxes and fees against all Plaintiffs and Class Members in

1 the form of special assessments is therefore illegal, and the taxes (with any associated penalties or
2 costs), must be cancelled.

3 243. Section 4990.3 of the Revenue & Tax Code provides that “[a]n action may be
4 brought at any time against ... any county ... to quiet title against the lien of any taxes which have
5 been canceled in accordance with this division.” Accordingly, Plaintiffs and Class Members seek
6 an order cancelling the illegally levied special assessments and quieting title in favor of
7 themselves and every Elder Subclass Member, with regard to the Renovate America-related PACE
8 Liens clouding title to their properties.

9 244. Pursuant to Government Code section 905(a), Claims under the Revenue and
10 Taxation Code are exempt from the requirements of the Government Claims Act. Cancellation is
11 a claim under Part 9, Chapter 4 of the Revenue and Taxation Code, and there are no prohibitions
12 on bringing class claims thereunder. Alternatively, the Government Code was satisfied when
13 Plaintiff Senac presented a claim to the County on behalf of herself and all others similarly
14 situated on September 13, 2018, amended October 22, 2018. The claim was rejected by the
15 County on December 7, 2018. Further in the alternative, any prerequisites for filing a class claim
16 were satisfied when Plaintiffs’ assessment appeals were denied (in whole or in part) after an
17 administrative review by the County. *See Exhibit Z.*

18 **EIGHTH CAUSE OF ACTION**

19 **Declaratory Relief**

20 **(By All Class Members Against All Defendants)**

21 245. Plaintiffs repeat and re-allege the allegations of paragraphs 1 through 163 as though
22 they were fully set forth herein.

23 246. A controversy exists between Defendants, on the one hand, and Plaintiffs and Class
24 Members, on the other hand, with regard to their legal rights and remedies towards one another in
25 connection with the PACE program and PACE Liens related to the activities of Renovate America
26 as alleged herein. Plaintiffs and Class Members desire a judicial declaration of their rights:

27 a. The Assessment Agreement Plaintiffs and Class Members were forced to
28 sign is unlawful and unenforceable;

1 b. The PACE Liens on the real property owned by Plaintiffs and Class
2 Members should be extinguished and removed from title;

3 c. Elder Plaintiffs and Subclass Members are entitled to cancellation of their
4 Assessment Agreements pursuant to the Welfare & Institutions Code;

5 d. Plaintiffs and Class Members' PACE assessments were illegally levied or
6 charged and Plaintiffs and Class Members are entitled to cancellation of taxes; and

7 e. Plaintiffs and Class Members are entitled to recover from Renovate
8 America any or all payments they made in connection with the PACE program and PACE
9 Liens, including payments made by way of refinance or sale.

10 247. On information and belief, Defendants dispute that Plaintiffs and Class Members
11 are entitled to such a judicial declaration.

12 248. A judicial determination is necessary and appropriate so that Plaintiffs and Class
13 Members may ascertain their rights and interests in their respective properties.

14 **NINTH CAUSE OF ACTION**

15 **Refund of Taxes – R&T Code § 5140**

16 **(By Plaintiff Allen Bowen Individually Against the County)**

17 249. Plaintiff Allen Bowen on his own behalf repeats and realleges the allegations of
18 paragraphs 1 through 163 as though they were fully set forth herein.

19 250. On July 5, 2019, pursuant to Revenue and Taxation ("R&T") Code section 1603,
20 Mr. Bowen filed verified written claims with the Assessment Appeals Board for cancellation of
21 his PACE assessments pursuant to R&T Code § 4986 and a refund of monies paid in connection
22 with the PACE assessments pursuant to R&T Code § 5097.

23 251. Mr. Bowen made payments toward his PACE assessment of \$10,331.74 in each of
24 the 2017-2018, 2018-2019, and 2019-2020 tax years.

25 252. Although Bowen filed his claim on July 5, 2019, he continued to make payments
26 on his challenged PACE tax obligations during the pendency of the County's review. The County
27 did not impound the amount of tax computed on the portion of the assessment in dispute, but
28 continued to collect assessment tax payments from Mr. Bowen, including over \$5,000 tendered in

1 April 2020, *after* the County had issued its order of cancellation.

2 253. The grounds for Mr. Bowen's refund claim filed with the Assessment Appeals
3 Board each incorporated by reference the First Amended Complaint in the instant action, including
4 allegations that the PACE assessments were illegally assessed or levied, and erroneously or
5 illegally collected.

6 254. In March 2020, the County granted Mr. Bowen's request for cancellation pursuant
7 to section 4986. His request for refund was refused.

8 255. Mr. Bowen is entitled to recover all of the taxes that were erroneously or illegally
9 collected or illegally assessed or levied pursuant to R&T Code § 5097.

10 256. Mr. Bowen is also entitled to recover, pursuant to R&T Code 5097.2(c), the amount
11 of taxes he paid in excess of the amount due on the property after the County cancelled his PACE
12 assessment.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiffs and Class Members respectfully request the following and pray
15 for judgment as follows:

16 **As to the First Cause of Action for Financial Elder Abuse Against Renovate America:**

- 17 1. For damages and all other relief authorized by Welfare & Institutions Code section
18 15657.5, including but not limited to punitive and exemplary damages, in an
19 amount according to proof at time of trial;
- 20 2. For treble damages pursuant to Civil Code section 3345;
- 21 3. For reasonable attorney's fees and costs as authorized by Welfare & Institutions
22 Code section 15657.5(a);

23 **As to the Second Cause of Action for Financial Elder Abuse Against the County:**

- 24 4. For equitable cancellation of the special assessments levied under the PACE
25 program at issue herein and any obligations associated with those agreements;
- 26 5. For reasonable attorney's fees and costs as authorized by Welfare & Institutions
27 Code section 15657.5(a);

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6. For all other equitable remedies otherwise provided by law;

As to the Third Cause of Action for Breach of Contract Against Renovate America:

7. For damages in the amount suffered as a result of Renovate America’s breach of the Administration Contract;

8. For specific performance of Renovate America’s duties under the Administration Contract;

As to the Fourth Cause of Action for a Declaration that the Assessment Agreements are Unlawful Contracts Under Civil Code § 1670.5:

9. That this Court declare and enter an order and judgment that the Assessment Agreement is unconscionable as a matter of law;

10. That this Court declare and enter an order refusing to enforce the Assessment Agreement and voiding any obligations of the Plaintiffs and Class Members thereunder, including payment of any future tax obligations associated with the PACE assessment;

11. Any other remedy provided under Civil Code section 1670.5;

As to the Fifth Cause of Action for a Declaration that the Assessment Agreements are Unlawful Contracts Under Civil Code § 1668:

12. That this Court declare and enter an order and judgment that the Assessment Agreement is against policy of law;

13. That this Court declare and enter an order refusing to enforce the Assessment Agreement and voiding any obligations of the Plaintiffs and Class Members thereunder, including payment of any future tax obligations associated with the PACE assessment;

14. Any other remedy provided under Civil Code section 1668;

As to the Sixth Cause of Action for Violation of the UCL Against Renovate America:

15. For restitution of all amounts paid in connection with the Los Angeles County PACE program related to the activities of Renovate America as alleged herein;

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16. For all other relief authorized under the Unfair Competition Law, Business & Professions Code section 17200, et seq.;

As to the Seventh Cause of Action of Cancellation of Taxes Against the County:

17. For cancellation of all or any portion of any tax, penalty, or costs, illegally levied or charged on the Plaintiffs and Class Members and quiet title against the lien of any canceled taxes;

As to the Eighth Cause of Action of Declaratory Relief Against All Defendants:

18. A judicial determination of Plaintiffs and Class Members' rights and interests in their respective properties and with respect to their Assessment Agreements with the County;

As to the Ninth Cause of Action of Refund on Behalf of Allen Bowen in His Individual Capacity Against the County:

19. A judgment for Refund for Mr. Bowen in the amount paid on his PACE assessments, up through and including the 2019-2020 tax year (estimated at \$30,995.22).

As to all Defendants and all Causes of Action:

- 20. For an order that this lawsuit properly may be maintained as a class action and certifying the Class and Subclass claims herein;
- 21. For appropriate injunctive relief;
- 22. An award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5; and
- 23. Such other relief at law or equity as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.


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1 Dated: August 7, 2020

HOGAN LOVELLS US LLP
Michael M. Maddigan
Gabriel R. Ulman
Elizabeth E. Goncharov

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What is a Property Assessed Clean Energy (PACE) Loan?

Sept. 2016

PACE programs, authorized by local governments under state legislation, offer loans for residential and commercial renewable energy and efficiency improvements. Energy efficiency is a pivotal tool for reducing energy costs and enhancing home energy security in low-income households. While well-designed PACE programs may save energy and/or money for higher-income households, they are inappropriate for homeowners eligible for free or lower cost efficiency programs. Further, PACE has few consumer protections. Expensive loans that are often pushed by aggressive contractors for projects with questionable savings pose serious risks of predatory lending. Reports are already surfacing of problems that mimic the home equity scams and subprime abuses of the 1990s and 2000s.

PACE loans are offered through private contractors but are secured by a property tax lien and are collected through the tax bill. Many localities fund the program by issuing bonds linked to homeowner tax payments. These bonds are then sold to a private company that securitizes them and sells them on Wall Street. The local government often receives a fee for participating.

Tax payments are due once or twice per year unless taxes are escrowed with the homeowner's regular mortgage payment. There are several PACE models, but typically PACE loans are first-priority liens that jump ahead of existing mortgages. Features of California's PACE program (known as HERO—Home Energy Renovation Opportunity) include:

- Private contractors solicit and enroll homeowners, often through door-to-door solicitations.
- Generally 8% to 9% interest plus a fee. Can add thousands of dollars per year to the property tax bill for 5, 10, or even 20 years.
- Applications can be approved from the doorstep through a phone call and contracts may be e-signed (electronically) on the spot.
- An energy/water audit is recommended but is not required before the homeowner selects from a lengthy list of eligible energy efficiency, water efficiency, or renewable products.
- The contractor performs the installation and is paid by the local government.

Consumer Concerns

- Underwriting does not check whether borrowers can afford the loan; there is no guarantee that energy savings will pay for the improvements.
- No clear remedies for injured homeowners.
- Offered to low-income homeowners who are eligible for free energy efficiency improvements through the federal Weatherization Assistance Program or other lower cost options, but no requirement to tell homeowners about these free or low-cost options.
- Nonpayment risks tax foreclosure and default on the homeowner's traditional mortgage.
- Taking on a PACE lien may violate existing mortgages (even if payments are made); and may cause problems when selling or refinancing the house.
- PACE liens may not be covered by the Truth In Lending Act (TILA) or Real Estate Settlement Procedures Act (RESPA), which provide:
 - Ability-to-repay requirements.
 - 3-day advance review of documents with the right to cancel.
 - Ban on kickbacks; rules for broker compensation to avoid conflicts of interest;
 - Extra protections for high-cost loans;
 - Enforceable remedies for violations and a ban on forced arbitration clauses (which significantly reduce a consumer's legal options and rights).
- Marketed through door-to-door sales and telemarketers, posing a high risk of deceptive sales tactics and other home-improvement contractor abuses.
- No protections against upselling other products; less assurance of energy savings than through the federal Weatherization Assistance Program.
- Fannie Mae and Freddie Mac will not purchase loans on properties with PACE liens so it can be hard to refinance or sell those properties.

Recommendations

- Require assessment of ability to repay.
- Screen low-income households for eligibility for the free low-income Weatherization Assistance Program and other no- or low-cost programs.
- Mandate compliance with TILA and RESPA.
- Require compliance with the FTC's Holder Rule, so consumers have remedies against the holder of their loan, and so consumers aren't required to pay for defective repairs or equipment or scams.

- Before work starts, require independent verification that the consumer signed the contract and understands the costs and risks. Before the contractor is paid, independently verify that the work was properly completed. Require robust financial counseling for vulnerable homeowners.
- Require an independent energy audit to identify cost-effective improvements and to reduce the risk of unnecessary work. An exception may be made for emergency repairs if the measures are limited to addressing the emergency.
- Adopt rules that discourage upselling and products not recommended by the energy audit.
- Establish a homeowner protection fund for those injured by judgment-proof contractors.
- Ban deceptive tactics (i.e., claims that “it’ll pay for itself” unless that is guaranteed). Unfair practices by an auditor or contractor should be automatic violations of state laws prohibiting unfair and deceptive acts and practices.

For More Information

National Consumer Law Center comments to U.S. Department of Energy (Aug. 18, 2016): <http://bit.ly/2ceBOJF>

Contact: NCLC staff attorneys Charlie Harak (charak@nclc.org) and Lauren Saunders (lisaunders@nclc.org).

Residential Energy Efficiency Loan (REEL) Program

List of Eligible Energy Efficiency Measures (EEEMs)

How to use this list:

- 1** Locate your Eligible Energy Efficiency Measure in the table.
- 2** Confirm the measure is eligible for your customer based on their Investor-Owned Utility's (IOU) fuel service* and any measure requirements.
- 3** Enter the EEEMs ID (Public Identifier) and Measure Name for your selected project measure into the Itemized Invoice.



***Be sure to confirm your fuel source eligibility**

Some measures are gas or electric fuel source specific. For example, a customer who receives *electric* service from a municipality (e.g. LADWP) and *gas* service from an Investor-Owned Utility (e.g. PG&E) would **not** be eligible for the Air Cleaner/Purifier measure as this measure is only available to IOU customers receiving electric service.

Eligible Energy Efficiency Measures (EEEMs) For REEL

Be sure to check the Requirements to confirm your project meets eligibility specifications.

Appliances			
Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Air Cleaner/Purifier <i>Requirements: ENERGY STAR®</i>	Electric	Yes	AP-ACLN
Clothes Dryer (Electric) <i>Requirements: ENERGY STAR®</i>	Electric	Yes	AP-DRYE
Clothes Dryer (Gas) <i>Requirements: ENERGY STAR®</i>	Gas	Yes	AP-DRYG
Clothes Washer <i>Requirements: ENERGY STAR®</i>	Electric or Gas	Yes	AP-WASH
Convection Electric Oven	Electric	Yes	AP-CNVE
Convection Gas Oven	Gas	Yes	AP-CVGR
Dishwasher <i>Requirements: ENERGY STAR®</i>	Electric or Gas	Yes	AP-DISH
Freezer <i>Requirements: ENERGY STAR®</i>	Electric	Yes	AP-FREZ
Induction Range or Cooktop	Electric	Yes	AP-INDU
Range Hood <i>Requirements: ENERGY STAR®</i>	Electric	Yes	AP-RHDA
Refrigerator <i>Requirements: ENERGY STAR®</i>	Electric	Yes	AP-FRIG

Eligible Energy Efficiency Measures (EEEMs) For REEL

Be sure to check the Requirements to confirm your project meets eligibility specifications.

Building Envelope

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Air Sealing – Whole Building	Electric or Gas	No	BE-AIRS
Attic Insulation <i>Requirements: Must meet the standards specific to the climate zone</i>	Electric or Gas	No	BE-INSA
Cool Roof (CRRC certified) <i>Requirements: Product must be certified by Cool Roof Rating Council (CRRC), as required by Title 24.</i>	Electric	No	BE-ROOF
Floor Insulation <i>Requirements: Must meet the standards specific to the climate zone</i>	Electric or Gas	No	BE-INSF
Insulated Siding <i>Requirements: Siding panels with rigid foam insulation backing</i>	Electric or Gas	No	BE-INSS
Radiant Barrier <i>Requirements: Installed in the attic following manufacturer installation requirements</i>	Electric or Gas	No	BE-RADB
Wall Insulation <i>Requirements: Must meet the standards specific to the climate zone</i>	Electric or Gas	No	BE-INSW
Window Film <i>Requirements: Installed in conditioned space</i>	Electric or Gas	Yes	BE-WFLM
Windows/Glass Doors <i>Requirements: Installed in conditioned space</i>	Electric or Gas	No	BE-WIND

Demand Response

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Thermal Energy Storage (TES) System <i>Requirements: Must be used to shift energy usage to an off-peak time period on a recurring basis, referred to as permanent load shifting (PLS).</i>	Electric	No	DR-TESS

Eligible Energy Efficiency Measures (EEEMs) For REEL

Be sure to check the Requirements to confirm your project meets eligibility specifications.

HVAC			
Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Air Filter Alarm or Sensor	Electric or Gas	No	HV-FALR
Air Filter Upgrade – MERV <i>Requirements: MERV 13 installed with an ECM fan motor and an air filter alarm</i>	Electric or Gas	No	HV-MERV
Central Air Conditioning Unit	Electric	No	HV-CACS
Central Heating and Air Conditioning System	Electric or Gas	No	HV-CHAC
Diagnostic or Fault Detection Alert Systems	Electric or Gas	No	HV-ALRT
Duct Insulation <i>Requirements: Must meet the standards specific to the climate zone</i>	Electric or Gas	Yes	HV-DUCI
Duct Sealing	Electric or Gas	No	HV-DUCX
Duct Sizing or Optimization	Electric or Gas	No	HV-DUCT
ECM Furnace Fan Motor	Electric	No	HV-FECM
Evaporative Cooling <i>Requirements: Ducted, ducted with dampers, or window coolers</i>	Electric	No	HV-EVAP
Fan or Motor Control <i>Requirements: Controls for an HVAC fan or other motor</i>	Electric	No	HV-CTRL
Furnace – Residential Central Heating	Gas	No	HV-FURR
Heat Pump <i>Split or packaged system</i>	Electric	No	HV-HPMP
HVAC Tune-up and Optimization	Electric or Gas	No	HV-TUNE
Hydronic Radiant Heating	Electric or Gas	No	HV-HYRA
Mini Split <i>Requirements: 18 SEER or greater</i>	Electric	No	HV-MSHP
Mini Split Air Conditioning System <i>Requirements: 18 SEER or greater</i>	Electric	No	HV-MSPL
Smart Thermostat <i>Requirements: Must be programmable through a user interface and capable of two-way communication of data to a location outside the home</i>	Electric or Gas	Yes	HV-SMRT
Ventilation Fan <i>Requirements: Bathroom or in-line, ENERGY STAR® certified</i>	Electric	No	HV-VFEN

Eligible Energy Efficiency Measures (EEEMs) For REEL

Be sure to check the Requirements to confirm your project meets eligibility specifications.

Wall Furnace – Residential In-Unit	Gas	No	HV-FANT
Whole House Fan	Electric	No	HV-HFAN

Lighting

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
LED Lighting <i>Requirements: LED fixtures and light bulbs. Must be ENERGY STAR® certified. Recessed light fixtures in insulated ceilings must be rated ICAT (insulation contact air tight).</i>	Electric	Yes	LI-LEDL
LED Tape Lighting	Electric	Yes	LI-TAPE

Pool Products

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Pool Cover (Electric Heater)	Electric	Yes	PP-COVE
Pool Cover (Gas Heater)	Gas	Yes	PP-COVG
Pool Pump Motor <i>Requirements: ENERGY STAR®</i>	Electric	Yes	PP-MOTR

Eligible Energy Efficiency Measures (EEEMs) For REEL

Be sure to check the Requirements to confirm your project meets eligibility specifications.

Water Heating

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Faucet Aerator	Electric or Gas	Yes	WH-FAER
Heat Pump Water Heater <i>Requirements: ENERGY STAR®</i>	Electric	No	WH-HP55
Shower Head – Low Flow	Electric or Gas	Yes	WH-SHLF
Shower Thermostatic Value	Electric or Gas	No	WH-SHTV
Tank Insulation <i>Requirements: For domestic hot water heater</i>	Electric or Gas	Yes	WH-TINS
Tank Storage Water Heater (Gas) <i>Requirements: ENERGY STAR®</i>	Gas	No	WH-WHEG
Tankless On-Demand Water Heater (Electric)	Electric	No	WH-ETNK
Tankless On-Demand Water Heater (Gas) <i>Requirements: ENERGY STAR®</i>	Gas	No	WH-GTNK
Water Pipe Insulation <i>Requirements: For domestic hot water pipes</i>	Electric or Gas	Yes	WH-PIPE

Other

Measure Name	Eligible if IOU Provides	Eligible for Self-Install	Public Identifier
Other Measures Qualifying Through IOU/REN/CCA Programs <i>Requirements: Measure not elsewhere on this list that qualifies for an IOU/REN/CCA energy efficiency or demand response program</i>	Electric or Gas	No	OT-REBA
Other Measures Qualifying Through IOU/REN/CCA Programs – Self-Install <i>Requirements: Measure not elsewhere on this list that qualifies for an IOU/REN/CCA energy efficiency or demand response program and for which the IOU/REN/CCA program allows self-install</i>	Electric or Gas	Yes	OT-REBB

**BURBANK WATER AND POWER BOARD
MINUTES OF MEETING
AUGUST 5, 2021**

Ms. LaCamera called the regular meeting of the Burbank Water and Power Board to order at 5:03 p.m. by video conference/teleconference. This online meeting was held pursuant to Executive Order N-29-20 issued by California Governor Gavin Newsom which suspends certain requirements of the Ralph M. Brown Act.

Ms. LaCamera called for the Pledge of Allegiance to the Flag.

ROLL CALL

Board Present: Ms. LaCamera, Mr. Brody, Mr. Bardin, Mr. Eskandar, Mr. Ford, Mr. Herman
Mr. Smith

Board Absent: None.

Staff Present: Ms. Lindell, General Manager, BWP; Mr. Chwang, Senior Assistant City Attorney; Mr. Liu, Chief Financial Officer; Mr. Compton, Assistant General Manager, Chief Technology Officer; Mr. Tunnicliff, Assistant General Manager, Customer Service and Marketing; Mr. Wilson, Assistant General Manager, Water; Mr. Sleiman, Assistant General Manager, Electrical; Ms. Samra, acting Assistant General Manager, Power; Mr. Aquino, Administrative Officer; Ms. Edwards, Manager of Planning and Performance; Ms. Kaczmarek, Manager Customer Service Operations; Ms. Carreon, Customer Service Supervisor; Ms. Waloejo, Financial Planning and Risk Manager; Mr. Mellon, acting Power Resources Manager; Ms. Kramer, Executive Assistant; Mr. Casillas, acting Recording Secretary

INTRODUCTION OF ADDITIONAL AGENDA ITEMS

None requested.

ORAL COMMUNICATIONS

Ms. Kirschenbaum addressed the Board. She recently attended the Energy Committee for the Los Angeles City Council. The Energy Committee is in support of LADWP's plan of 100% clean energy by 2035. Ms. Kirschenbaum states that the City's current plan will not allow for the City to achieve its goal of renewable clean energy. She would like to see if the City would align more towards LADWP's goal and plan for local resilience and create more jobs in hopes of achieving the City's goal of renewable clean energy.

BOARD AND STAFF RESPONSE TO ORAL COMMUNICATIONS

Mr. Eskandar thanked Ms. Kirschenbaum for her appointment to the City's Sustainable Burbank Commission.

Mr. Smith responded asking to see when the next IRP review schedule would be to check on the current plan in place. At which, a decision can be made if any adjustments would be needed.

Ms. Samra responded that the next IRP review would be in 2024, with the due date being January 1, 2024. There is a plan to start reevaluating the studies and the different scenarios in the upcoming IRP starting next year.

Ms. Lindell thanked both Mr. Smith and Ms. Samra for their comments. Ms. Lindell noted that the City is moving forward with solar and local storage, on-site project plans for the Magnolia Power Plant campus – citing additional solar and storage. Additionally, the City is working on multiple storage projects throughout Burbank in conjunction with local businesses and has a partnership with LADWP with the Green Hydrogen Plants.

SELECTION OF BWP BOARD CHAIR AND VICE CHAIR

Ms. LaCamera called for nominations for Board Chair and Vice Chair. Ms. LaCamera nominated Mr. Brody as Board Chair and Mr. Bardin seconded the motion. Mr. Smith also nominated Mr. Eskandar as Board Chair. This motion did not move forward due to lack of a second. Mr. Smith discussed his reasons for nominating Mr. Eskandar, citing a need for leadership from a veteran board member. It was moved by Ms. LaCamera, seconded by Mr. Bardin, and carried 6-1, noting one no vote from Mr. Smith, to select Mr. Brody as Board Chair for fiscal year 2021/22.

Mr. Brody called for nominations for Vice Chair. It was moved by Mr. Brody, seconded by Mr. Eskandar, and carried 7-0 to select Mr. Ford as Vice Chair for fiscal year 2021/22.

Mr. Brody concluded the discussion by thanking Ms. LaCamera for her service as Board Chair.

GENERAL MANAGER REPORT

Ms. Lindell gave an update to the Board on COVID-19 noting that BWP has had a total of 38 positive cases. Ms. Lindell informed the Board that we will continue to follow the LA County/City protocols for COVID-19 and we will resume in-person board meetings once the City Council resumes in-person meetings.

Ms. Lindell reminded the Board of the virtual strategic planning meeting scheduled for Thursday, August 19, 2021. Ms. Lindell and Ms. Edwards presented BWP's strategic business elements in preparation for the upcoming strategic planning meeting.

CONSENT CALENDAR

MINUTES

It was moved by Mr. Ford, seconded by Mr. Eskandar, and carried 6-1, noting one abstention from Mr. Herman, to approve the meeting minutes of the regular meeting of June 03, 2021.

REPORTS TO THE BOARD

BWP OPERATIONS AND FINANCIAL REPORTS

Mr. Liu presented BWP's financial update for the month of May 2021.

Mr. Liu and Mr. Sleiman responded to board member questions.

This was an information item only. No action was taken.

COVID-19 IMPACT UPDATE

Ms. Carreon presented an update on the number of customers in arrears and the status of associated debt. Ms. Carreon also reported out on the breakdown of applications for the COVID-19 Job Loss Bill Credit Program and the Rental and Utilities Assistance Program. Staff continues to work with customers impacted by COVID-19 through payment plan arrangements. Ms. Kaczmarek also presented on the California Arrearage Payment Program (CAPP).

Ms. Carreon, Mr. Tunnicliff, and Ms. Kaczmarek responded to board member questions.

This was an information item only. No action was taken.

2021 WATER REVENUE BOND ISSUANCE

Mr. Wilson and Mr. Liu presented the 2021 water bond financing. Mr. Wilson reported on the purpose of bond issuance, challenges faced, and proposed projects for bond funding. Mr. Liu reported on the reasons for financing bonds.

Mr. Wilson and Mr. Liu responded to board member questions.

It was moved by Mr. Herman, seconded by Mr. Eskandar, and carried 7-0 that the BWP Board recommend that the City Council authorize the City of Burbank to issue a water revenue bond of up to \$31 million for various generational capital investments for the water system and refinancing of the State Water Resource Control Board (SWRCB) loans for interest savings.

APPROVAL OF THE NAMING OF THE RON E. DAVIS ADMINISTRATION BUILDING AND ECOCAMPUS

Ms. Kramer presented a recommendation to approve the naming of the Ron E. Davis Administration Building and EcoCampus at Burbank Water and Power for former City Manager Ron E. Davis.

Ms. Kramer responded to board member questions.

It was moved by Mr. Eskandar, seconded by Mr. Herman, and carried 7-0 that the BWP Board recommend that the City Council approve the naming of the Ron E. Davis Administration Building and EcoCampus located at 164 West Magnolia Boulevard, Burbank, CA 91502.

August 5, 2021

APPROVAL OF A FIFTH AMENDMENT TO THE LOS ANGELES-BURBANK HOOVER TRANSMISSION SERVICE AGREEMENT AND A SECOND AMENDMENT TO THE LOS ANGELES-BURBANK INTERMOUNTAIN POWER PROJECT TRANSMISSION SERVICE AGREEMENT WITH THE LOS ANGELES DEPARTMENT OF WATER AND POWER

Mr. Mellon presented two amendments to the Transmission Service Agreements that will enable energy to be continued to be delivered to Burbank.

Mr. Mellon, Mr. Chwang, Ms. Lindell, and Ms. Samra responded to board member questions.

It was moved by Mr. Bardin, seconded by Ms. LaCamera, and carried 7-0 that the BWP Board recommend that the City Council approve and authorize the General Manager of BWP, as designee of the City Manager, to:

1. Execute the Fifth Amendment to the Los Angeles-Burbank Hoover Transmission Service Agreement, DWP Agreement No. 10928
2. Execute the Second Amendment to the Los Angeles-Burbank IPP Transmission Service Agreement, DWP Agreement No. 10006.

INFORMATION FROM STAFF

UPDATE ON CITY COUNCIL AGENDA ITEMS

Ms. Kramer provided an update on recent items that BWP has taken to the City Council, the voting outcomes of those items, and future items that BWP has scheduled on the City Council agenda forecast.

LEGISLATIVE UPDATE

Mr. Aquino provided a federal and state legislative update. Mr. Aquino reported out on the legislative calendar and highlighted legislation that BWP is monitoring.

Mr. Aquino responded to board member questions.

WATER DIVISION UPDATE

Mr. Wilson provided an update on current drought conditions and MWD's implementation of using their in-system storage. Mr. Wilson reported on current actions being done by the state. MWD is urging everyone to do more to increase conservation and released a statement following the state's response to the ongoing drought. Mr. Wilson reported on BWP's proposed response to the Governor's call for conservation. Mr. Wilson also reported on the current chlorine shortage and BWP's response to the shortage.

Mr. Wilson, Ms. Lindell, Mr. Oyoung, and Mr. Tunnick responded to board member questions.

POWER SUPPLY UPDATE

Ms. Samra updated the Board on the CA Energy Commission Renewable Portfolio Standard (RPS) regulations that went into effect on July 12, 2021. Ms. Samra reported out that the BWP RPS mandates were at 33% in 2020, which BWP did meet. Ms. Samra reported on future updates to the BWP Board regarding RPS procurement plans and the IRP process and timeline.

ELECTRIC SERVICES UPDATE

Mr. Sleiman updated the Board on the next five-year developments for the division's volt systems throughout the City.

Mr. Sleiman responded to board member questions.

COMMENTS AND REQUESTS FROM BOARD MEMBERS

Mr. Brody thanked the Board for allowing him to become the Board Chair. Mr. Brody also thanked Ms. LaCamera for her service during her term as Board Chair.

Ms. LaCamera commented on her term as Board Chair and expressed her experience with virtual Board meetings. Ms. LaCamera also commented on the budget process for the adoption of fiscal year 2021/22 budget and thanked the City Council for approving the BWP budget for fiscal year 2021/22.

Mr. Ford thanked the Board for allowing him to become the Board Vice Chair.

Mr. Bardin commented on how helpful the presentations were and expressed his support for naming the Administration Building and EcoCampus after former City Manager, Ron E. Davis. Mr. Bardin also acknowledged the Charge Forward event and expressed his immense sense of pride for Burbank. Mr. Bardin gave a shoutout to BWP Employee, Drew Kidd, for seeing his name on the list for the California Clean Fuel Award.

Mr. Eskandar congratulated Ms. LaCamera for her term as Board Chair.

Mr. Smith commented on the Board's objectives. Mr. Smith would like to see certain metrics that would assist on the Board's progress, safety metrics, and make cyber security a regular topic. Mr. Smith would like to see if other board members would consider such suggestions. Mr. Smith noted examples of suggestions such as ethics procedures and standards of conduct for interactions between BWP staff and the BWP Board. Mr. Smith recommended that the Board act to support legislation that allows for greater rights for utility customers. Mr. Smith also encouraged board member support for the idea of establishing audit committees.

Mr. Herman gave shoutouts to Mr. Oyoung and Ms. Soloyan for their presentation at a recent Rotary meeting regarding public assistance and rebates. Mr. Herman welcomed back Mr. Sleiman for his return as the Assistant General Manager of Electric Services.

BWP Board Meeting Minutes
August 5, 2021

ADJOURNMENT

The meeting was adjourned at 8:40 p.m. The next scheduled board meeting is a special meeting scheduled for August 19, 2021 and will be held by video conference/teleconference.

Armando Casillas
Acting Recording Secretary

Dawn Roth Lindell
Secretary to the Board

Robbie Brody, BWP Board Chair



CITY OF BURBANK BURBANK WATER AND POWER STAFF REPORT

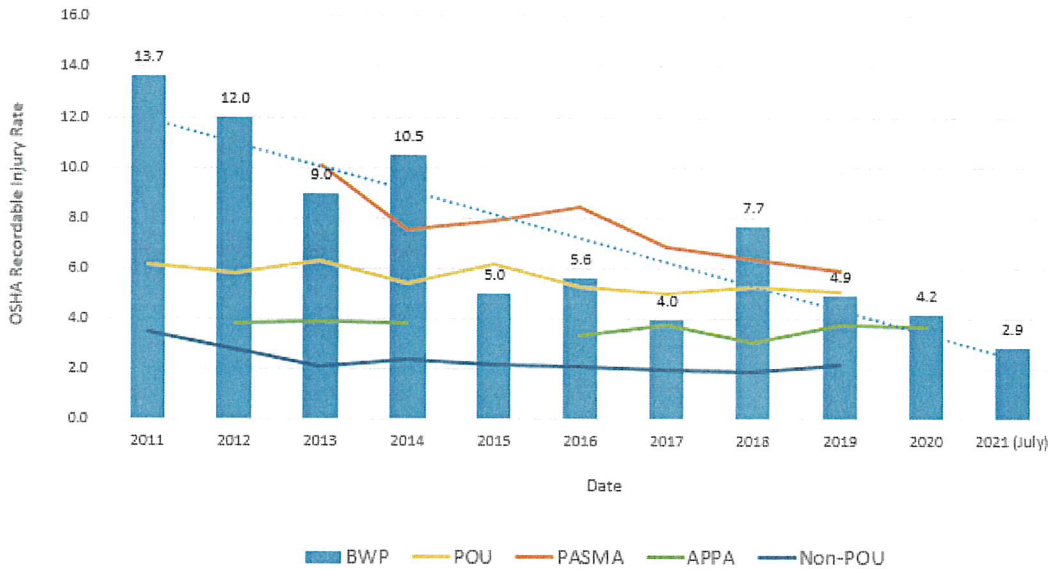
DATE: September 2, 2021
TO: BWP Board
FROM: Dawn Roth Lindell, General Manager, BWP *Dawn Roth Lindell*
SUBJECT: July 2021 Operating Results

***Please note that changes from last month's report are in BOLD**

SAFETY

For this reporting period BWP experienced one OSHA recordable injury. BWP's 12 month rolling average rate is **2.9**.

TOTAL RECORDABLE INJURY RATE (TRIR)



OSHA Recordable Injury Rate = No. of recordable cases per 100 full time employees. Current year expressed as 12 month rolling average
 PASMA - Public Agency Safety Management Association (Utilities only Data)
 POU - Publicly Owned Utilities - Bureau of Labor Statistics
 APPA - American Public Power Authority - Average recordable injury rate for similar sized organization. Category F = 250K - 1MM manhours/year
 Non-POU - Bureau of Labor Statistics, all non-governmental utility services

Water Estimated Financial Results

For the month of June, net income (NI) was \$494,000, which was \$102,000 less than budgeted. The unfavorable result was primarily attributed to lower potable water sales than planned.

For fiscal-year-to-date (FYTD) June, NI was \$2,665,000, which was \$2,751,000 higher than budgeted. The favorable result was primarily attributed to lower operating expenses and higher potable water sales as a result of COVID-19.

For additional details, please see the section **“COVID-19 “Safer at Home” Order Impacts”** and the attached financial statements.

Electric Estimated Financial Results

For the month of June, NI was \$1,276,000, which was \$2,200,000 higher than budgeted. The favorable result was primarily attributed to the wholesale asset utilization program and lower retail power supply and transmission expenses, offset slightly by lower retail sales as a result of COVID-19.

For FYTD June, NI was \$6,358,000, which was \$10,724,000 higher than budgeted. The favorable result was primarily attributed to lower operating expenses, lower retail power supply and transmission expenses, and the wholesale asset utilization program, offset partially by lower retail sales as a result of COVID-19.

For additional details, please see the section **“COVID-19 “Safer at Home” Order Impacts”** and the attached financial statements.

COVID-19 “Safer at Home” Order Impacts

Financial Impacts

June’s results reflect the fifteenth month of the impacts resulting from the COVID-19 pandemic beginning on March 19, 2020. With many Burbank commercial enterprises being closed or curtailing operations, this order has significantly impacted commercial demand for water and energy in Burbank.

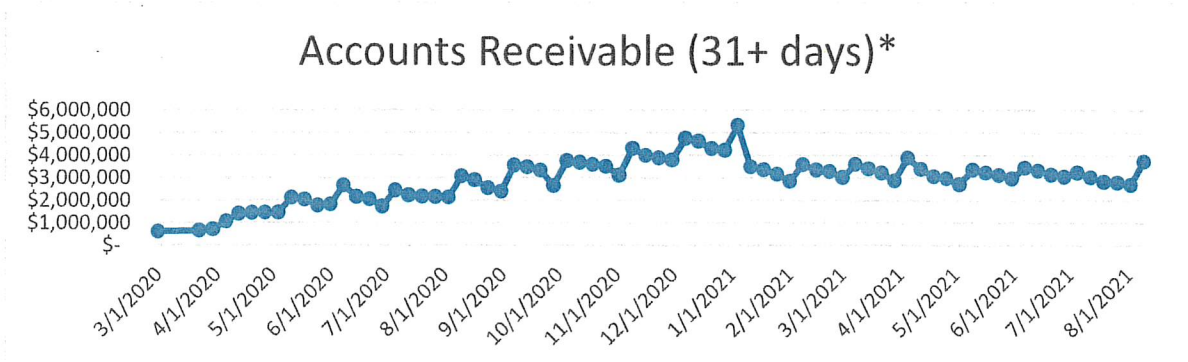
The current year’s adopted budget, based on the estimated impacts of the pandemic order at the time, reflects a 5% lower energy demand and a 3% lower potable water usage as compared to last year’s budget. Recent data has shown that the impact of COVID-19 has resulted in a significant reduction in electric demand and only a slight reduction in water demand. Along with the decrease in demand, there is a large increase in customer receivables and uncollectibles.

For the electric fund, June energy demand was 2% below budget. COVID-19 has had a negative impact on energy sales, especially when commercial customers account for approximately 75% of electric sales. FYTD energy usage was 7% below budget and retail revenues were \$11,987,000 below budget. The loss in retail revenue was more than offset by retail load management, economic dispatch and the wholesale asset utilization program, resulting in a higher gross margin of \$1,707,000.

For the water fund, the decrease in demand from commercial customers related to COVID-19 was fully offset by an increase in demand from residential customers primarily driven by warmer summer temperatures and a drier winter. For the fiscal year, potable water demand is 5% higher than budget. There is a decrease in demand from commercial customers related to COVID-19, but it has been offset by an increase in demand from residential customers.

Accounts Receivables

The chart below shows the drastic increase for receivables that are over 31 days old for BWP’s electric and water funds.



*Excludes in-lieu and utility users tax. The COVID-19 Job Loss Bill Credit Program commenced on December 1, 2020. BWP also began engaging in customer outreach to key commercial accounts on December 17, 2020.

WATER DIVISION

State Water Project Update

On July 8, 2021 Governor Newsom signed executive order N-10-21, "To preserve the state's surface and groundwater supplies and better prepare for the potential for continued dry conditions next year, and to join existing efforts by agricultural water users, public water systems, and governmental agencies to respond to water shortages, I call on all Californians to voluntarily reduce their water use by 15 percent from their 2020 levels." The State Water Resources Control Board (Water Board) shall track and report monthly on the State's progress toward achieving a 15 percent reduction in statewide urban water use as compared to 2020 use.

The DWR State Water Project's (SWP) current allocation is 5% of requested supplies for the 2021 water year. Allocations are based on conservative assumptions regarding hydrology and factors such as reservoir storage. Allocations are reviewed monthly and may change based on snowpack and runoff information.

Lake Oroville, the SWP's largest reservoir, is currently at **24%** of capacity and **34%** of average for this time of year. Shasta Lake, the Central Valley Project's (CVP) largest reservoir, is at **30%** of capacity and **44%** of average. In southern California, SWP's Castaic Lake is at **36%** of capacity and **43%** of average.

Burbank's Water Use

The table below shows water use in Burbank during **July 2020** compared to **July 2021** measured in gallons per capita per day (gpcd). Also shown is a comparison of Burbank's water use based on a 12 month rolling average.

	Average Monthly Use	Rolling 12 Month Average
July 2020	157 gpcd	137 gpcd
July 2021	162 gpcd	143 gpcd

Burbank Operating Unit (BOU) Water Production

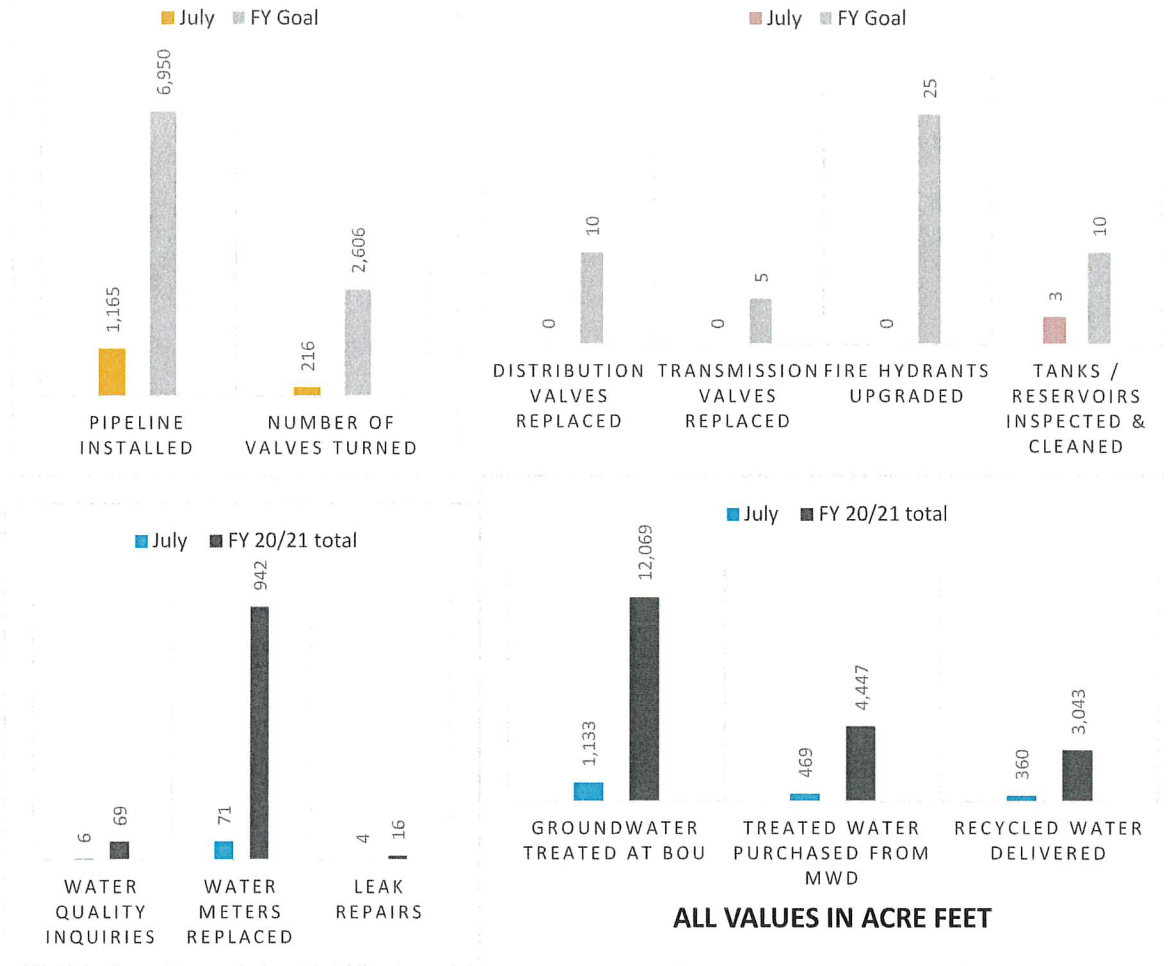
The table below provides the operational data for the BOU for the months of **October 2020 through July 2021**.

	BOU Capacity Factor	BOU Ave. Flow Rate	Total System Blend % MWD/BOU
20-Oct	97.81%	8,803 gpm	21% / 79%
20-Nov	55.61%	5,005 gpm	49% / 51%
20-Dec	86.25%	7,762 gpm	19% / 81%
21-Jan	69.16%	6,224 gpm	24% / 76%
21-Feb	93.55%	8,402 gpm	25% / 75%
21-Mar	96.00%	8,640 gpm	27% / 73%
21-Apr	86.40%	7,776 gpm	21% / 79%
21-May	92.72%	8,344 gpm	20% / 80%
21-Jun	88.61%	7,975 gpm	31% / 69%
21-Jul	91.93%	8,274 gpm	29% / 71%
	<i>Ave Blend %-last 3 fiscal years</i>		39% / 61 %

The total system blend percentage represents the total amount of water that was purchased from Metropolitan Water District (MWD) vs. the amount treated by the BOU. This, along with the capacity factor, is an important measure of efficiency. The capacity factor may fluctuate based on demand and plant production; the blend percentage measures how much of the total system’s demand is made of purchased or produced water. The amount of MWD water needed is determined by demand, availability of BOU water, and O&M outages.

Key Performance Indicators

The graphs below illustrate the progress the water division has made on key performance measures through **July**. Note that the values provided need to be viewed with respect to where we are in the fiscal year. Pipeline installation is **17%** complete and we are **8%** through the fiscal year. We have been fortunate on our Monterey, Orchard to Lincoln pipeline project that we have encountered relatively few utilities, boosting our production rate to 115 feet per day and for the first month of the new fiscal year we find ourselves ahead of our goal .



Leak Alert Notifications

In 2009, BWP began installing an automated metering infrastructure (AMI) system by Itron. The system consists of endpoints that connect directly to the meter to get the meter read. The meter read was transmitted by radio from the endpoints located in the meter box and received by 10 collectors stationed throughout the city. The data was “backhauled” or bundled using the Tropos radio system and delivered to database servers that accepted and processed the meter data. Full deployment of the system (approximately 26,000 endpoints) was completed in 2011.

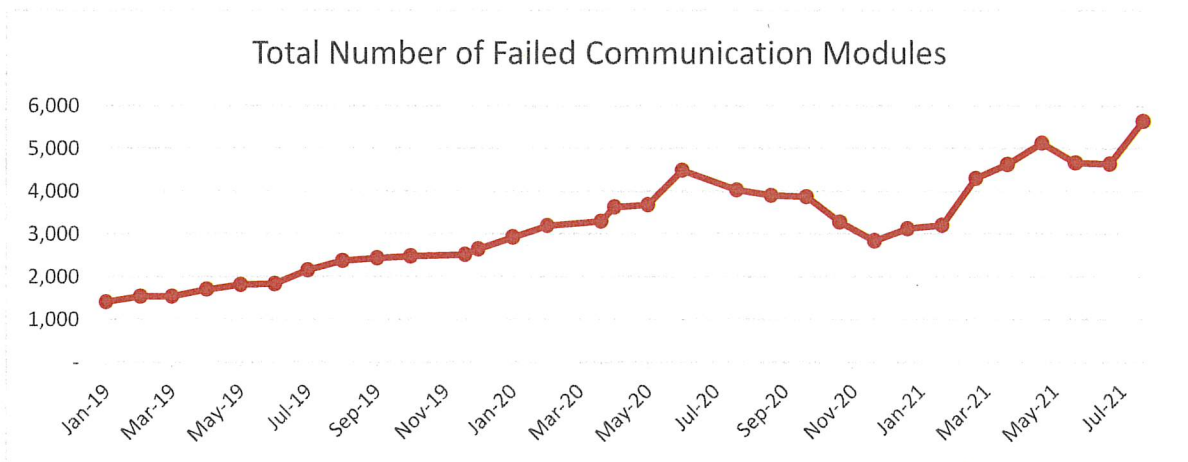
Benefits of AMI technology allow data to be collected rapidly and frequently and can be analyzed to find higher than normal usage and alert customers of leaks. BWP began providing leak alert service to residents who registered to receive notifications. This service, called Water Smart, works by receiving hourly water usage from the meter and analyzes this data to determine if a leak might be present based on continuous usage. Since 2015, BWP has provided 11,756 leak alerts to customers. Unfortunately, a

high volume of water meter communication modules are not working reliably and replacement units are no longer produced.

As of **July 2021**, BWP was not able to receive remote reads for **5,643** water meters out of 27,060 (**21% of the total**) due to failing communications modules and they had to be read manually. In March 2021, staff deployed an interim automatic meter reading (AMR) system to read approximately 800 meters with failed communication modules and we are now able to read them.

BWP previously notified customers who participate in the leak alert program that the failure of these communication modules prevents the sending of leak alert notifications, and due to continued failures BWP is now in the process of notifying additional customers.

BWP is now exploring an updated AMI system. The AMR system unfortunately will not enable BWP to notify customers of leaks at all. This will leave customers vulnerable to unnoticed leaks causing water damage, bills that could reach thousands of dollars as well as unnecessary and significant water waste.



Projects

Monterey – Lincoln to Orchard; 8-inch Potable Water Main Project:

This capital improvement project (CIP) is an essential part of the Water Master Plan. We continue to upgrade our water distribution system by installing additional water mains to take the service connection load off of existing transmission mains. This improves the reliability of the transmission systems, which moves massive amounts of water between the different sections of town. Also, by having dedicated distribution mains for service connections, mains can be repaired without disrupting transmission service.



ELECTRIC DISTRIBUTION

ELECTRIC RELIABILITY

In June 2021, BWP experienced one sustained feeder outage. In the past 12 months, automatic reclosing has reduced customer outage time by approximately **1,262,841** customer minutes.

Reliability Measurement	August 2019 – July 2020	August 2020 – July 2021
Average Outages Per Customer Per Year (SAIFI)	0.3982	0.2773
Average Outage Duration (CAIDI)	20.78 minutes	29.65 minutes
Average Service Availability	99.998%	99.998%
Average Momentary Outages Per Customer Per Year (MAIFI)	0.4039	0.3016
No. of Sustained Feeder Outages	9	11
No. of Sustained Outages by Mylar Balloons	2	3
No. of Sustained Outages by Animals	1	0
No. of Sustained Outages by Palm Fronds	0	0

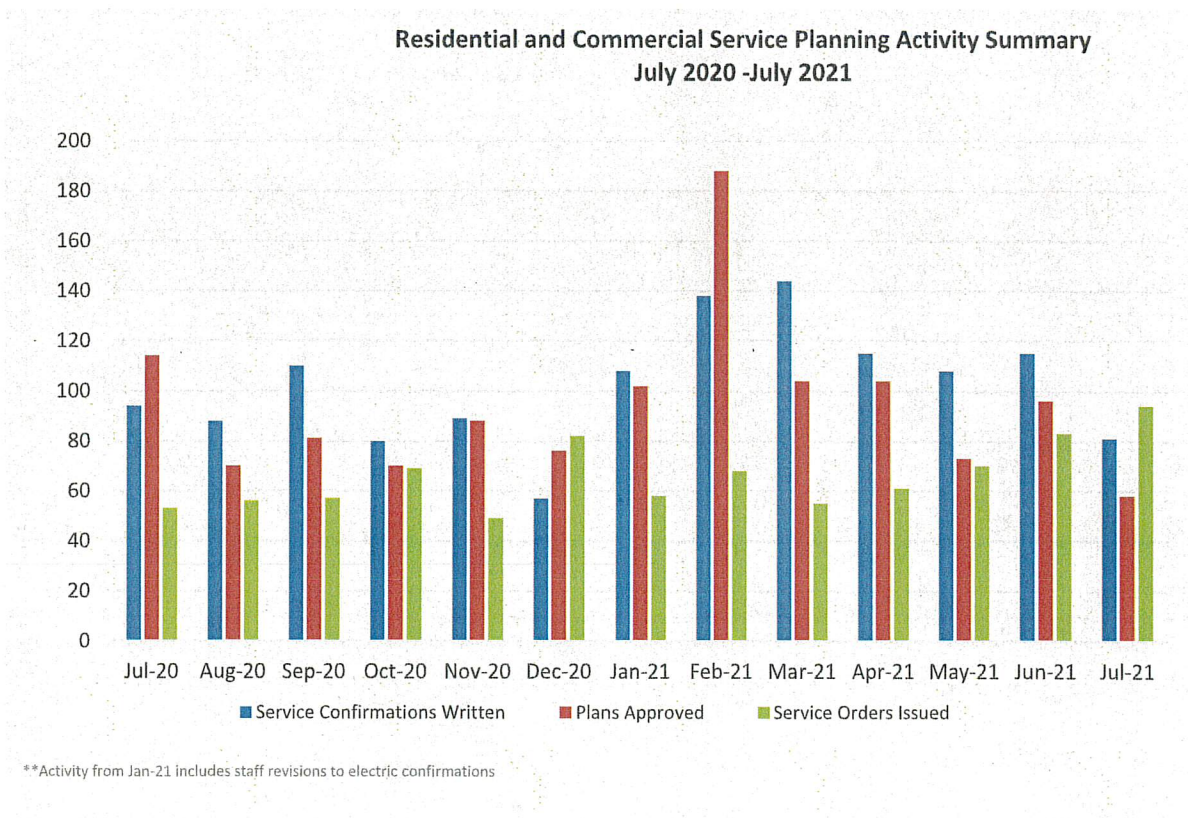
PROJECT UPDATES

Distribution Capital Projects

The electrical engineering section is seeing an unprecedented amount of development requests including large site developments, major housing developments, and accessory dwelling units. Staff is currently managing these requests with an acceptable turn-around time while utilizing overtime and consultant services. If this level of development is to continue, the electrical engineering section will need to staff accordingly to be able to keep up with the maintenance work that is currently being placed on hold to accommodate the development work and resulting capital projects.

Residential and Commercial Service Planning Activities

BWP provides our residential and commercial customers with the electrical power they need for new services or upgrades to their existing service. In order for a customer to obtain a building permit for their construction, BWP service planners must visit the customer's facility and fill out an electric service confirmation form which details what type of service is required and how it will be served. After reviewing and approving a customer's electrical plans, BWP service planners issue service orders to our field crews to carry out the inspections and electrical service work. The graph below summarizes monthly activity for our residential and commercial service planning group within the T&D engineering section.



AVION Burbank Development Update

The AVION Burbank development is a large planned development near the airport currently under construction. The on-site development includes six warehouses, nine office buildings, two retail buildings, and a hotel. This development contributed to a portion of the cost to construct the Ontario Substation as well as the underground conduit on Winona Ave. between Ontario St. and Hollywood Way.



Figure 1 – Aerial photograph looking south-west from Hollywood Way/Tulare (this is Phase 1 of Avion)

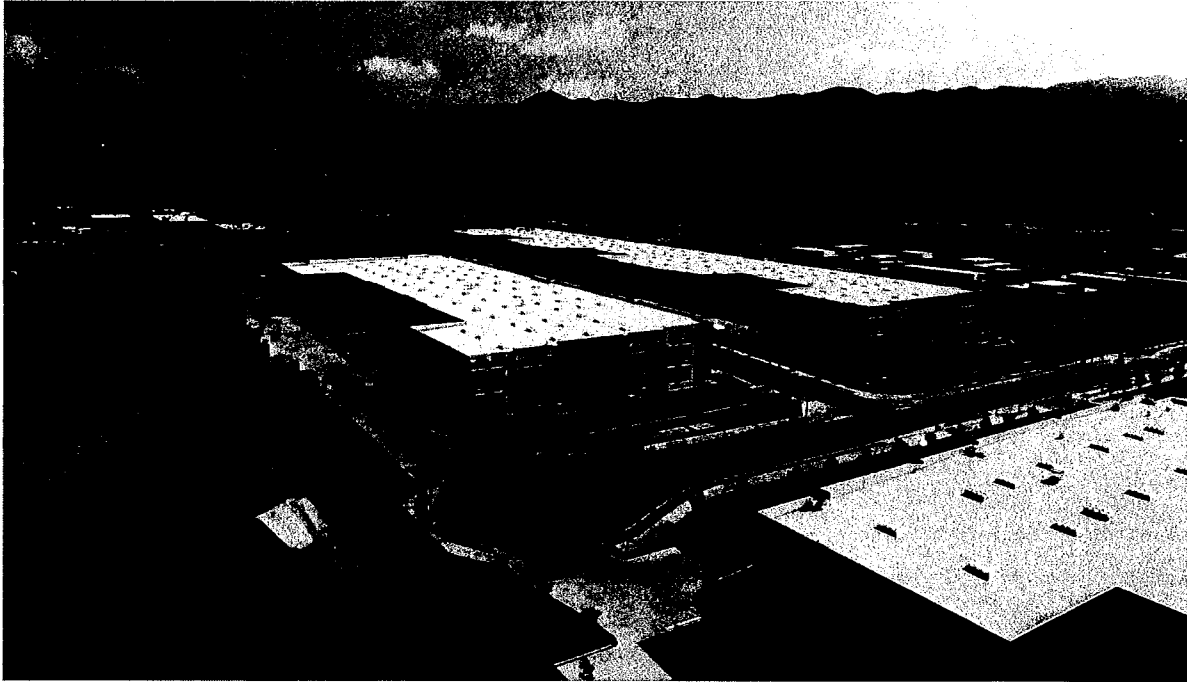


Figure 2 – Aerial photograph looking north-east from the airport parking lot (warehouses 5 & 6)

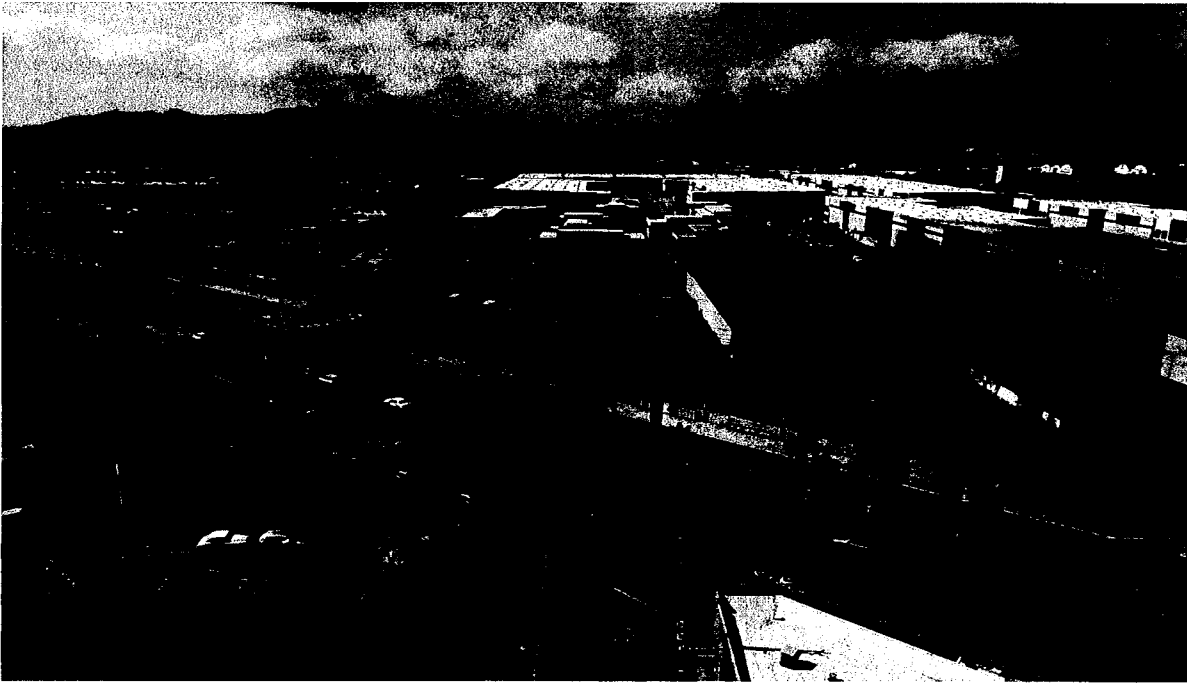


Figure 3 – Aerial photograph looking south from San Fernando (future hotel site, phase 2 in progress)

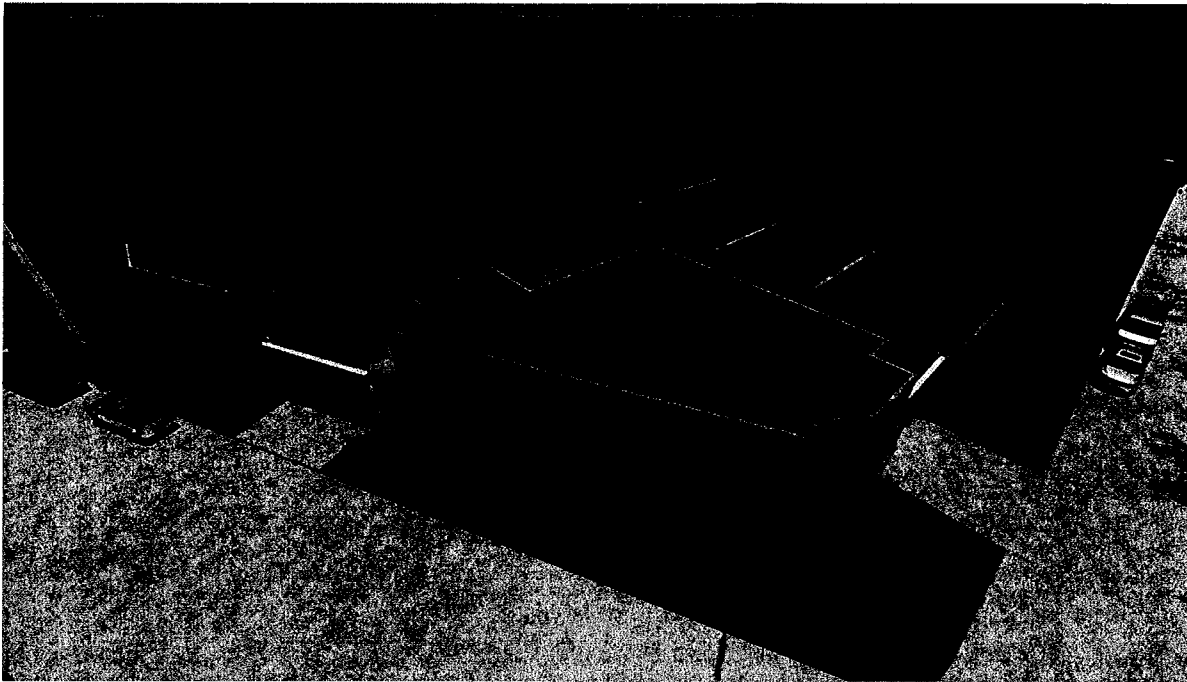
In order to provide electrical service to this development, two new 12 kV distribution feeders have been installed from the Ontario Substation to the project site. To date, all six warehouse buildings have been energized. Amazon, the tenant in warehouse buildings 1-4, is fully operational as of May 2021. As work progresses onsite, additional underground 12 kV electrical infrastructure will be installed over the coming months. The new streetlight system along the newly extended Tulare Avenue is also complete.



Figure 4 – New street lighting system along Tulare Ave (looking west from Hollywood Way)

Willow Substation and Distribution Work to Second Century Project at The Burbank Studios

Willow Substation is a new 69 kV to 12 kV electrical substation that will replace an existing 34 kV to 4 kV substation in the Media District area and provide capacity for serving the Second Century Project at The Burbank Studios. The request for proposal (RFP) and technical specifications for a design-build contract for this new substation is expected to be released in August with evaluations of bids concluding in late November. Expected completion of Willow Substation is currently scheduled for the 4th quarter 2023. Below is a conceptual drawing of Willow Substation:



Conceptual drawing

In order to serve the new Second Century development and existing load at The Burbank Studios, BWP is installing two 12 kV feeders from the Willow Substation and extending an existing feeder to the project site. In order to temporarily serve the project site while Willow Substation is being constructed, BWP's contractor has already completed a portion of the underground electric substructure work including the installation of a new manhole and conduit system on California Street. BWP crews are now working on pulling cables and installing electric equipment to serve Phase I of the Second Century project's load with an estimated energization of the service in September 2021. BWP engineering is currently working on the design for Phase 2 of the Second Century project.



Conduit installation on California St.



Manhole installation on California St.

Golden State Rebuild Project

As a result of the Golden State Substation transformer fire in April 2020, and the future need for additional capacity in the area, BWP is proceeding with a project to rebuild large portions of the substation. The rebuild would include two larger size transformers, a control building, 12 kV switchgear, capacitor banks, protection and control equipment, and other auxiliary equipment. The RFP and technical specifications are near ready to be released for bidding. The anticipated completion of the substation rebuild is currently scheduled for the 3rd quarter of 2023.

Regional Intermodal Transportation Center (RITC) Solar + Storage Project

The Regional Intermodal Transportation Center (RITC) Solar + Storage Project will feature a 1.5-2 MW rooftop solar PV generation plant with a 6-8 MWh energy storage technology. Renewable energy from the project will feed directly into BWP's 12 kV distribution system and will contribute to BWP's renewable energy goals. This project was conceived as part of the developer's agreement for future expansion plans of the Hollywood Burbank Airport. As part of the terms, BWP contributed electric vehicle (EV) charging infrastructure to the airport and in return BWP received the rights to build a rooftop solar PV generation at the RITC. The EV chargers have been installed at the airport and now BWP is beginning the process to install the solar PV.

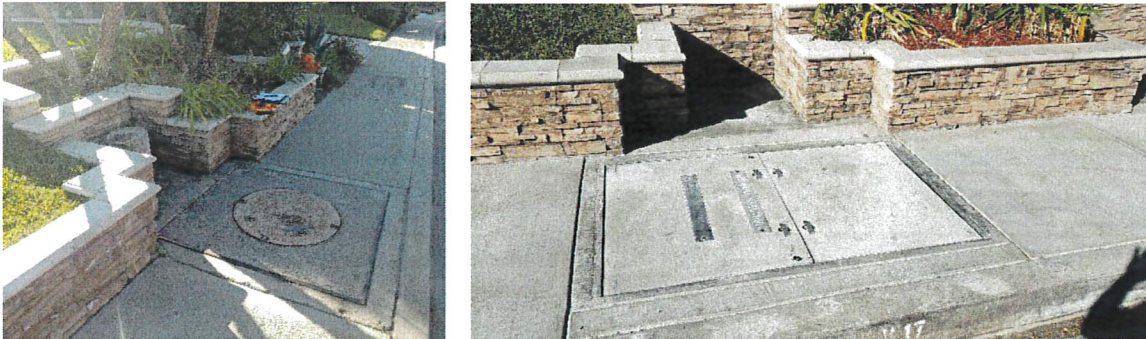
In addition to working towards fulfilling BWP's renewable portfolio standards, the energy storage will provide BWP with many exciting opportunities to evolve the distribution grid and prepare it for an impending future of increased distributed

energy resources. The approach typically used to maximize the usefulness of energy storage is called “value stacking”, or put simply, using the energy storage for multiple prioritized applications. For example, the main use of the battery could be to peak shift, but it could also be used as needed to provide voltage or frequency support to the grid. This project is expected to begin preliminary engineering design work this fiscal year 21-22 with construction taking place sometime in the fiscal year 22-24 timeframe.

Hillside Vault Replacements

As identified in the Electric Distribution Master Plan, BWP established a program to modernize aging submersible transformers housed in deteriorating subsurface vaults in our residential underground distribution system. As part of this program, BWP plans to replace the 28 existing submersible transformers with above ground padmount transformers and convert the deteriorating vaults to new standard pullboxes. This modernization will provide improved safety, reduced maintenance and enhanced reliability.

So far, 7 vaults have been replaced as part of this program. In July, BWP issued a notice to proceed to the contractor, Doty Bros Construction Co, for the substructure work of 10 additional vault replacements and is currently expecting this work to be completed by mid-September, about 1 1/2 months ahead of the original schedule. The remaining BWP electrical work to install and wire the new padmount transformers will be completed several weeks after the contract work is done.



Vault 17 before and after (the new transformer will be installed off frame to the right)



Vault 16 before and after



Vault 14 before and after



Vault 15 before and after

Winona-Lincoln #1 Sub-Transmission Line Relay Replacement at Lincoln & Winona Substations

BWP is in the process of replacing its older electromechanical sub-transmission line relays with modern microprocessor relays. These older relays take about 6 times longer to isolate the electrical system from a fault, resulting in higher arc flash levels and a higher risk of additional equipment failure. Some of these older line relays currently installed in BWP's system have exceeded their typical life expectancy of 40 years. Pursuant to the Electric Distribution Master Plan, BWP has targeted to budget CIP funding to replace all of its older line relays by fiscal year 2022-23.

BWP's electrical equipment section completed the installation and testing of the new relays for Winona-Lincoln #1 line in July 2021. The new relaying improves personnel and equipment safety by isolating faults much more quickly, increasing reliability through their ability to self-diagnose, improving maintenance by reducing the number of relays by roughly 1/3, increasing the routine testing interval from 3 to 5 years, and logging digital event records which aides in troubleshooting.



Prior to Replacement (old relays)



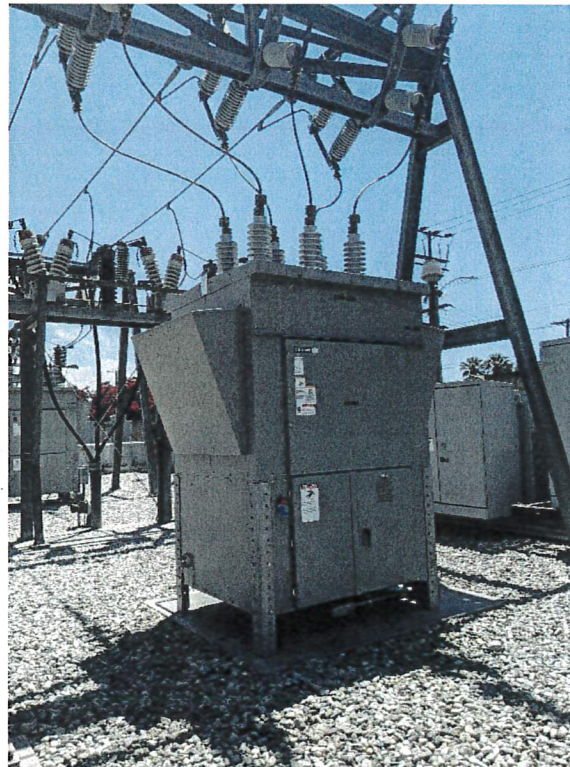
Post Replacement (new relays)

34.5 kV Lincoln Circuit Breaker Replacement

The 34.5 kV oil-filled circuit breaker (OCB) at Lincoln Substation, used to help isolate the Winona Lincoln #1 and Winona Lincoln #2 lines from the Lincoln 34.5 kV Bus, was not opening as quickly as designed. The existing unit was commissioned back in 1971. After performing additional maintenance on this circuit breaker, it was determined it could not be brought back to its original design specifications. As such, this circuit breaker was removed and replaced with a new vacuum circuit breaker (VCB). The new VCB opens faster than the original OCB, which means it does a better job of protecting equipment and reducing arc flash exposure to personnel.



Original 34.5 kV Oil Circuit Breaker at Lincoln

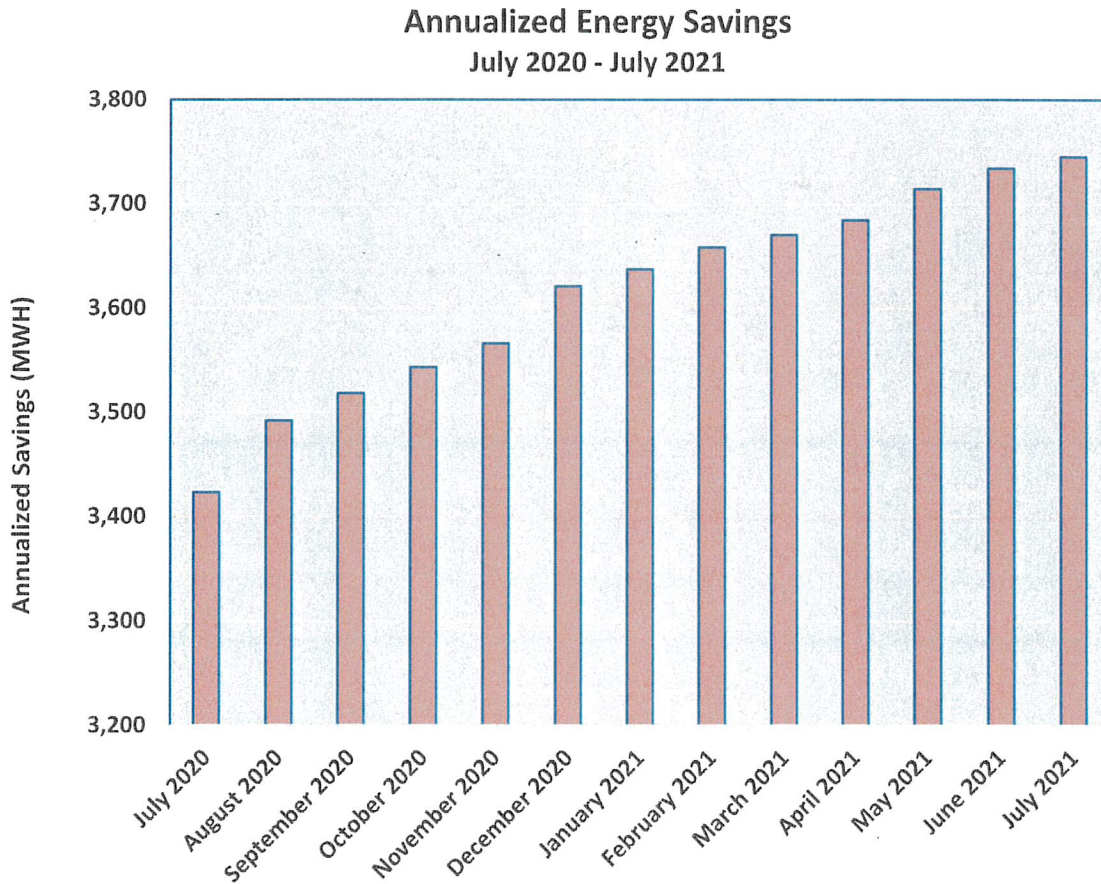


New 34.5 kV Vacuum Circuit Breaker at Lincoln

STREET LIGHTING

LED Replacement Program

In accordance with the Street Lighting Master Plan, BWP is replacing high pressure sodium (HPS) street light luminaires with light emitting diodes (LED) luminaires. Replacement is carried out on a maintenance basis, and LEDs are installed daily as the HPS luminaires burn out. The LED replacements consume approximately 60% less energy. **To date, 70.73% of the total street light luminaires have been converted to LEDs, which translates to an annualized energy savings of 3,745 MWh or a 40.41% reduction in energy consumption. LED conversions have also reduced evening load by 855 kW, which shortens the “neck of the duck curve” and reduces the amount of energy generation that BWP needs.** The graph below shows the annualized energy savings in MWh for the past 13 months.



Wireless Telecom Attachments

BWP has entered into four master license agreements to allow communication carriers to attach, install, operate and maintain communication facilities on street light poles with the public right-of-way. These agreements are currently with AT&T, Verizon, Extenet, and Crown Castle.

In order for the communication carriers to build a new location for a wireless telecom attachment, BWP must first provide an electric service confirmation, which details how the location will be served. Each design must meet the city's aesthetic requirements as well as BWP's design guidelines. Once BWP approves the plans and a Public Works permit is issued, BWP issues work orders to our field crews to carry out inspection as well as the electrical and street lighting work. The table below summarizes the activity that has taken place to date:

	Confirmations in Progress	Written Confirmations	Plan Sign-offs	WTA Work Orders Issued	WTA Sites Energized
AT&T	1	40	12	9	9
Verizon	115	75	-	-	-
Crown Castle	6	-	-	-	-
Total	122	115	12	9	9

CUSTOMER SERVICE

Customer Service Operations

Call volumes decreased by 8% in July. BWP continues to assist customers through the COVID-19 Job Loss Bill Credit Program. Customer service representatives assist customers, make payment arrangements to reduce the amount in arrears, and provide additional resources to help customers manage their utility bill.

BWP Call Center Call Types & Volume

Call Types	% of Calls
Balance	12%
Update Account Info	8%
Residential Stop	6%
Residential Start	5%
Solid Waste	3%

	Jul -20	Aug -20	Sep -20	Oct -20	Nov -20	Dec -20	Jan -21	Feb -21	Mar -21	Apr -21	May -21	Jun -21	Jul -21	% Inc/Jun
Call Volume	4,055	3,812	3,783	3,527	3,055	3,684	3,383	2,897	3,384	3,017	2,799	3,468	3,186	-8.1%

Online Account Manager

The enrollment in the online account manager (OAM) is currently at **58%** of all active accounts; increases in enrollments have also been on the rise since the COVID-19 pandemic. Of all registered accounts, about 82% are paperless customers helping BWP reduce costs and reduce carbon emissions. BWP will continue its efforts to drive customers to the OAM, paperless, and auto pay. These initiatives will continue to drive down costs. BWP's second milestone is to have 80% of all active accounts registered on the OAM by the end of 2021.

The OAM adoption plan consists of three phases. Phase one was to build awareness and promotion through broad communications. The second phase is to provide targeted messages to segments that have not adopted the OAM. The third phase is to provide incentives to adopt the OAM. Currently, about 86% of customers that have not adopted the OAM are residential. Therefore, phase two and three will be focused on residential adoption to reach the 80% overall adoption goal. The adoption plan is currently in phase two and will move into phase three during the last quarter of this calendar year.

The images below are examples of marketing messaging aimed at key customer segments including: General Market, Seniors, Green, and Constrained.



Find Your Zenergy

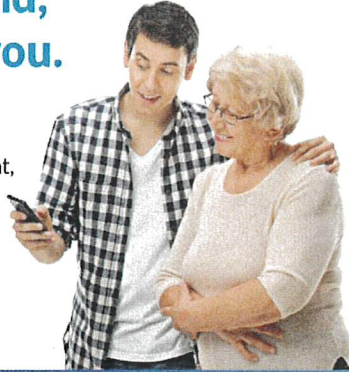
BWP's **Online Account Manager** takes the stress out of paying your bill and managing your account.

Register now at my.BurbankWaterAndPower.com

General Market

Peace of mind, for both of you.

BWP's Online Account Manager lets you set up a Guest User for any account, so you can get help from someone you trust to manage your account.



Register now at: my.burbankwaterandpower.com

Seniors and Adult Children



Whatever schedule you have to keep, we're right there with you.

BWP's Online Account Manager is available 24/7, so you can manage your account no matter where you have to be.



Register now at: my.burbankwaterandpower.com

Constrained



Choosing green is choosing the future.

BWP's Online Account Manager is paperless. It's one small decision you can make for the planet, and for those who will live in the future we create.

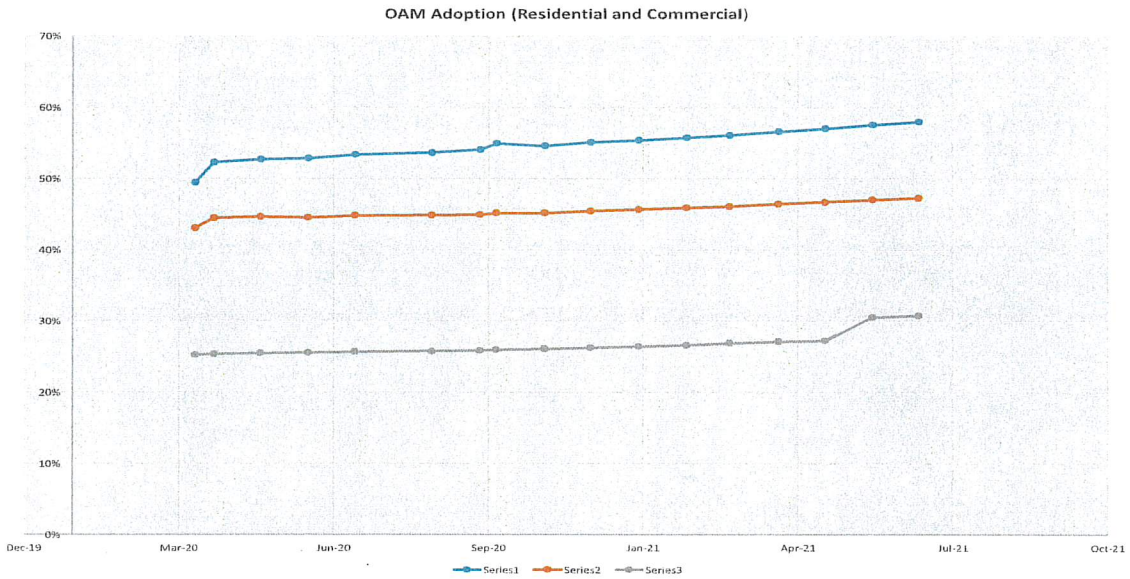


Make the switch at: my.burbankwaterandpower.com

Green

Marketing is promoting OAM utilizing every owned channel including on-bill messaging, digital Currents, print Currents, social media, and BWP’s website.

Below is the chart outlining activity for the OAM:



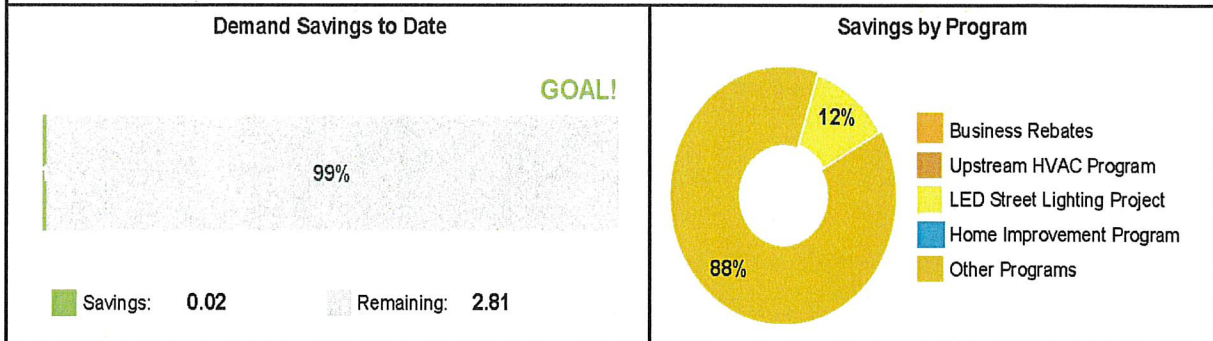
	Active	% of Total Active Accounts
Active Users	30,306	58%
Paperless	24,689	47%
Autopay	16,058	31%

BWP’s Energy Efficiency and Water Savings – Fiscal Year to July 31, 2021

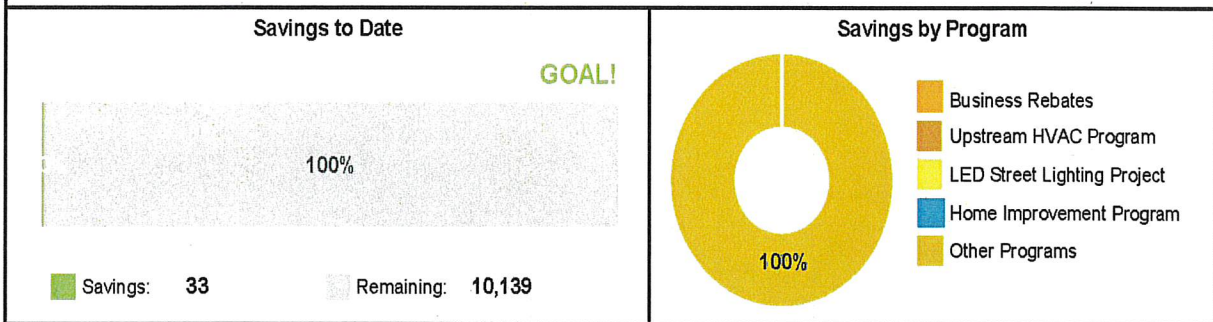
Changes in state and local COVID-19 orders allow for more services to be restored for efficiency programs that require home or onsite visits. BWP collaborated with vendors to ensure proper protocols are in place to restore services and comply with health orders. As a result, the Refrigerator Exchange Program has been resumed as of June 2021. It is feasible that all remaining onsite services may be restored during the month of September 2021. Meanwhile, other energy efficiency and water conservation programs that do not require onsite visits such as BWP’s rebate programs continue to operate. As a result of the program suspensions due to COVID-19, program activities continued to be significantly reduced for the month of **July 2021**. In April 2020, the online Home Energy Audit was launched as part of a larger suite of online resources for residential customers. Promotion for the suite of resources has appeared in the *Currents* newsletter and other communication channels. The Home Energy Audit allows residential customers to complete the audit, analyze their energy use, and receive energy saving tips. Commercial program participation continues to significantly contribute to the reported savings for the month of **July**, mostly from the BWP business rebates program utilized by some of the largest commercial customers. Incentives for large projects have incentive caps but yield total project efficiency savings.

Energy Efficiency Savings FYTD 2021-2022 Period ending on 7/31/2021

1% Demand Goal = 2.92 MW

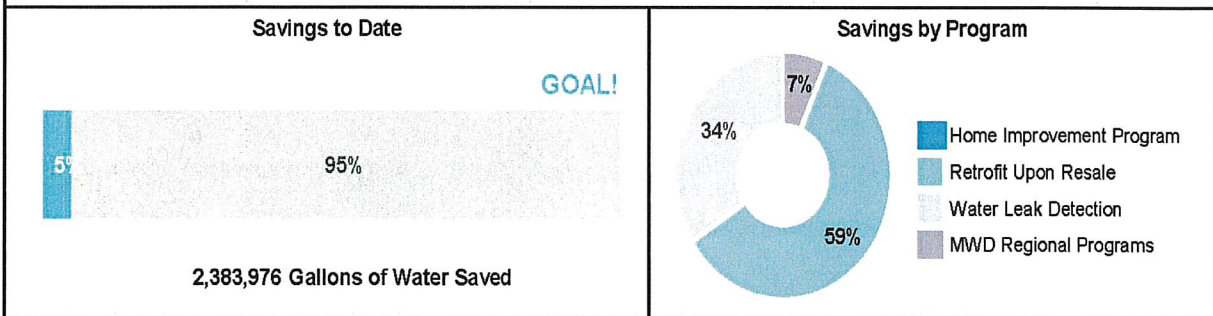


1% Consumption Savings Goal = 10,172 MWh



Water Savings Goal FYTD 2021-2022

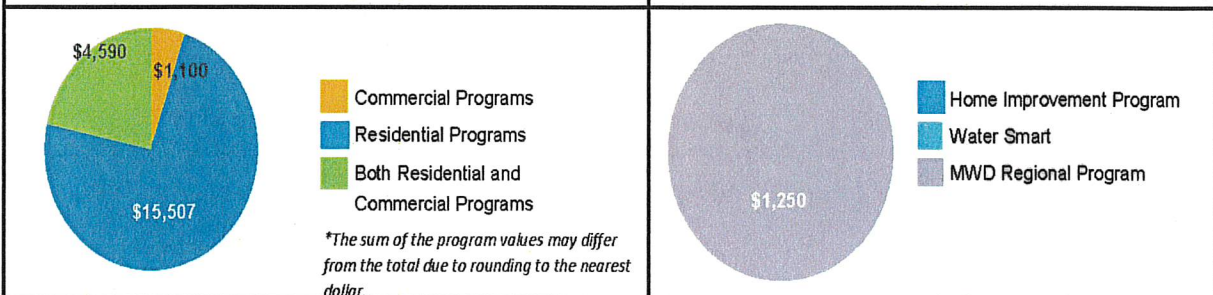
1% (49,630,000 Gallons) Potable Water Savings Goal



Efficiency Investments FYTD 2021-2022

*Electric Programs: \$21,197

Water Programs: \$1,250



Electric Vehicle (EV) Charging Program

73 public EV charging ports are installed in Burbank, including 2 DC fast chargers and 24 curbside ports. As of July 1, 2021, summer peak pricing is in effect for public EV charging stations. The public charging rate is \$0.3069 per kilowatt-hour (kWh) from 4PM to 7PM and \$0.1753 per kWh for all other hours for Level 1 and Level 2. For DC fast chargers, the charging rate is \$0.4980 per kWh from 4PM to 7PM and is \$0.2817 per kWh for all other hours.

Data from the California DMV indicates that as of December 2020, there are now 2,233 registered plug-in hybrid electric vehicles (PHEV) and EVs in the City of Burbank, versus 2,236 registered PHEVs and EVs in December of 2019. However, the total share of electric vehicles rose from 2.5% to 2.8% in that time. The reason for this is the total number of internal combustion engine (ICE) vehicles changed from 88,378 to 78,710, for a total reduction of 9,668 ICE vehicles. This does show a greater resiliency in the EV market in Burbank as this is a 10.9% reduction in ICE vehicle numbers, while there was only a 0.13% reduction in total EV numbers.

BWP surpassed the goal to install 24 publicly available EV charging ports during fiscal year 2020-2021 and installed 26 ports. The goal was completed as of June 10 and all new 26 EV charging ports are installed and available to the public.

The 26 EV charging ports are as follows:

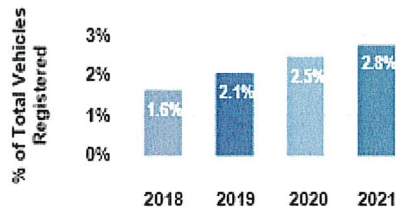
Curbside EV Chargers Project – Six new curbside charging ports are operational in three locations with existing curbside chargers with two ports at each location. The three locations are N. Hollywood Way, near Victory Blvd., Buena Vista Street, adjacent to the Buena Vista Library and Alameda Ave., near Main Street.

- **Community Services Building – 16 Ports**

In collaboration with the Community Development and Public Works Departments, publicly available charging ports are available in the Community Services building parking lot. The charging ports are in the parking lot nearest the intersection of Olive Ave. and Glenoaks Blvd. Repaving and restriping was added to the project at the request of the Public Works Department and was completed the week of July 6. A ribbon cutting ceremony occurred on July 12, 2021, which was attended by Congressman Schiff, City Council, Board Member Brody, and was covered by CBS, KTLA, and Fox News.

Transportation Electrification 2021-2022 Period ending on 7/31/2021

EV Growth in Burbank*



Total EV/PHEV DMV Vehicle Registrations

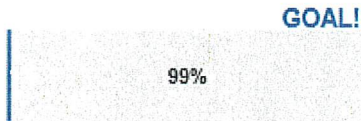
2021:	2,233
2020:	2,236
2019:	1,912
2018:	1,494

* DMV data as of Jan 01 of the reporting year

Transportation Electrification Initiatives for FY 2021-2022

Used EV Rebates

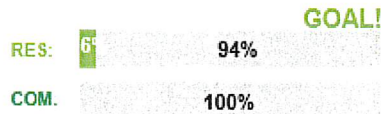
Goal: 40



Given: 1 Remaining: 39

Charging Station Rebates

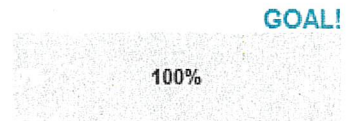
RES. Goal: 50 COM. Goal: 40



Residential: 5 Remaining (Res): 45
Commercial: 0 Remaining (Com): 40

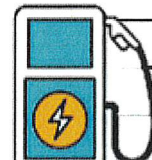
Public Charging Ports

Goal: 40



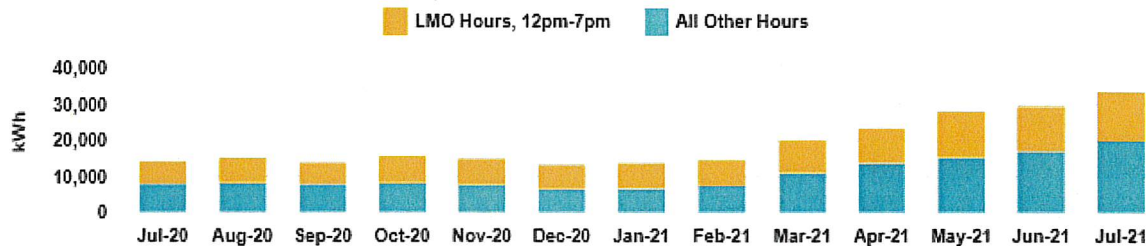
Installed: 0 Remaining: 40

Public Charging Port Statistics

	Public Charging Ports		Total Sessions	Total Energy	Total Revenue	Total GHG Reduced*	¹ Peak Charging Sessions	² Charging Occupancy
	Total Ports	Total Available						
 July:	73	73	3,376	33,631	\$7,006	19,373	23%	12%
Average:	73	73	3,376	33,631	\$7,006	19,373	23%	12%
FY Total:	73	73	3,376	33,631	\$7,006	19,373	23%	12%

* Source: U.S. Dept of Energy Alternative Fuels Data Center (AFDC) values used to calculate GHG savings. GHG values revised using AFDC data as of 06/09/2020.

Load Management Opportunity (LMO) Hours

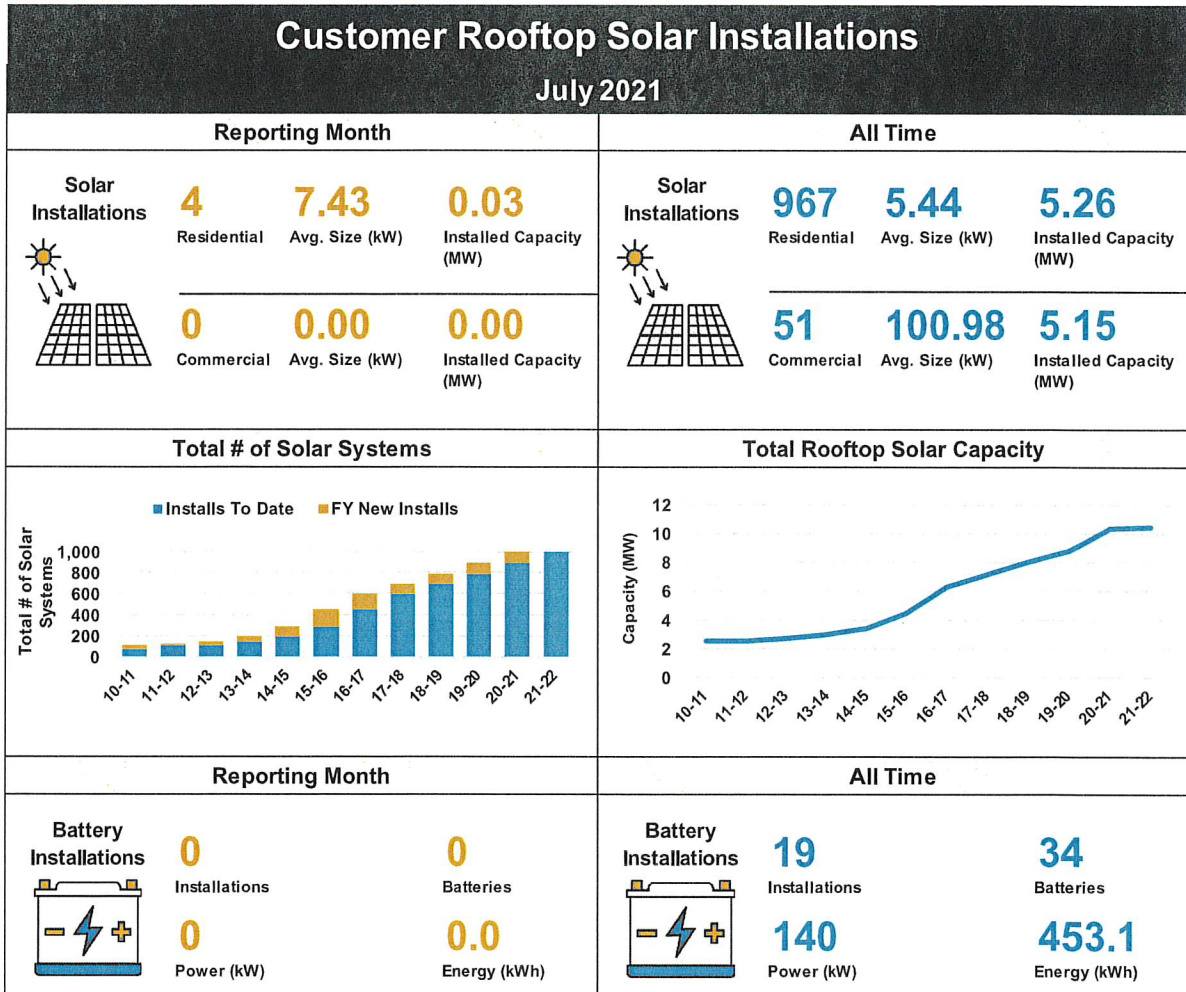


¹Peak is defined as 4 – 7 PM, as is reflected in the Public EV Charging Station rate

²Charging Occupancy is defined as the percentage of time EV's are charging at stations for all available hours in a given month across all charging stations

Rooftop Solar and Battery Installations

Customer owned rooftop solar and battery storage system installations continue to grow. Burbank Water and Power does not provide rebates for installing these systems. However, overall, lower equipment costs and the Federal Investment Tax Credit make purchasing solar and/or battery systems more accessible. System capacity and number of installations are tracked monthly and in total below.



TECHNOLOGY

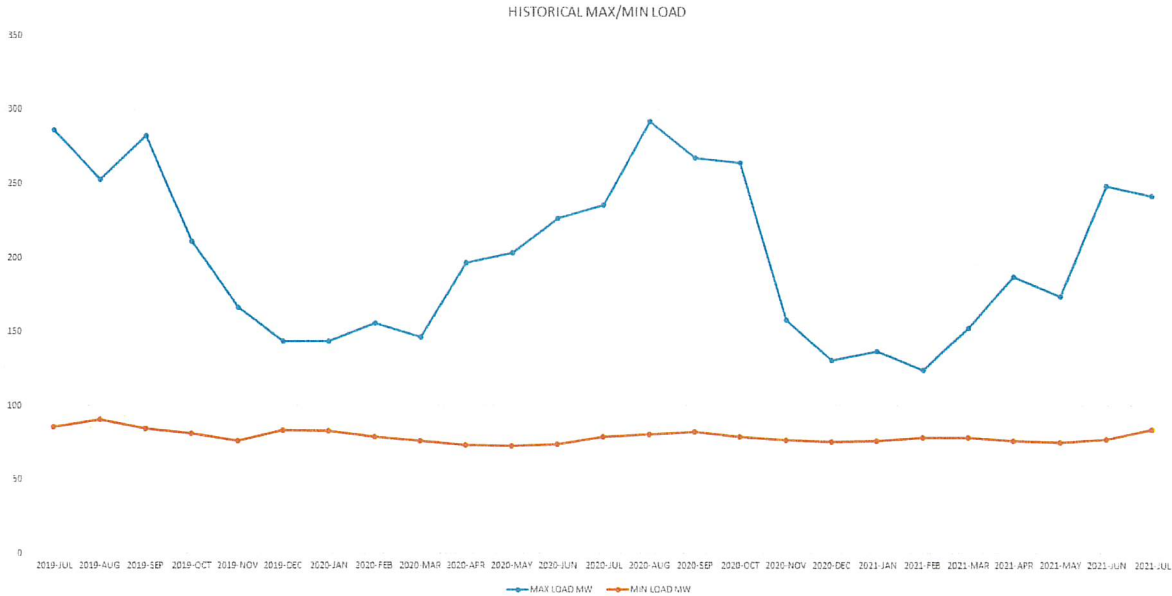
Broadband Services (ONEBurbank)

	July 2021 New Orders	Revenues for July 2021	FYTD 2021-22 Revenues	FYTD Budget
Lit	1	\$140,941	\$140,941	\$135,000
Dark	1	\$181,465	\$181,465	\$202,500
Total	2	\$322,406	\$322,406	\$337,500

POWER SUPPLY

BWP SYSTEM OPERATIONS:

The maximum load for July 2021 was 242.1 MW at 4:02 PM on July 22, and the minimum load was 84 MW at 3:58 AM on July 5.



Minimum load values corrected for Sept & Dec 2018.

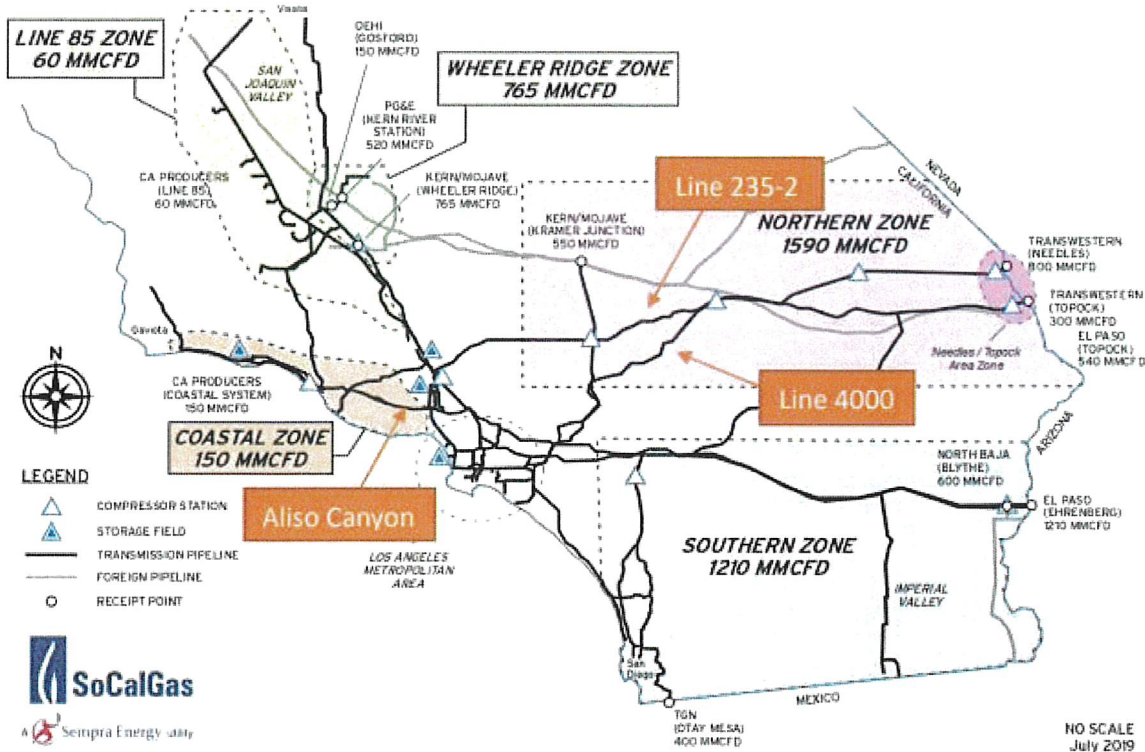
YEAR	MAX LOAD	MAX DATE
2021	248.5 MW	15-June-21 14:57
2020	292.3 MW	18-Aug-20 15:22
2019	282.66 MW	04-Sep-19 15:31
2018	306.3 MW	06-Jul-18 16:41
2017	322.1 MW	31-Aug-17 16:02

The Burbank power system did not experience any operational issues or natural gas supply issues for July 2021. BWP had zero days of red flag warnings.

Southern California continues to experience natural gas reliability and affordability challenges because of supply and demand mismatches. SoCalGas' system capacity and supply are primarily a function of two components: (1) transmission pipelines, which bring gas into and then transport it throughout the system; and (2) underground natural gas storage connected to transmission pipelines near system load. While one component of the system's limited supply is the transmission pipeline reductions and outages, the other critical component is storage operating constraints from the CPUC restricting the use of the Aliso Canyon Storage Facility. The current effective withdrawal protocol is restrictive but is less restrictive than the previous protocol, in that Aliso Canyon was only allowed to

be withdrawn from if curtailment was imminent, but now can occur under less acute circumstances.

Image 1: Receipt Points & Transmission Zone Firm Capacities



ELECTRICITY GENERATION:

BWP Generating Facilities

Unit	Availability	Operating Hrs	MWH (Net)	Net Heat Rate (Btu/kWh)	Number of Starts
Olive 1	0%	0	0	0	0
Olive 2	0%	0	0	0	0
Lake 1	99%	227	7,792	10,475	25
MPP	100%	744	127,961	7,613	0

Olive 1 and 2 remained in dry storage, with a 120-day notice required to restart. Olive 1 and 2 have been in dry storage since 2011 and 2012, respectively.

Lake 1 experienced operational concerns in late December. As a result, it was removed and shipped to a certified facility in Houston, TX for inspection and repairs. **The inspection findings indicated the need to replace multiple components that were worn beyond allowable limits and BWP is now proceeding with a full turbine overhaul. Revised estimates included a possible December 2021 return to service and a leased turbine remains installed to mitigate summer risks. The leased turbine was placed online twenty five times during the month of July.**

Magnolia Power Project (MPP)

	July	FYTD	YTD
Availability	100%	100%	55%
Unit Capacity Factor (240 MW)	72%	72%	38%

There were no plant trips or other outages at MPP during the month of July.

Tieton Hydropower Project (Tieton)

Tieton's 2021 generation season began April 5, 2021 with a single generation unit due to limited water flow controlled by the United States Bureau of Reclamation (BOR). **In July, the Rimrock Reservoir, which supplies Tieton, was reduced to 93% capacity and water flow to Tieton allowed operation of a single generation unit. Approximately 6,560 MWh were generated in July for the project.**

ENVIRONMENTAL

Air Quality

Air quality tests were conducted on MPP on June 3 and June 4, 2021 and on the Lake unit on June 7, 2021. The tests were completed successfully, and the formal reports are pending. Air quality testing is required by the Environmental Protection Agency (EPA) and the South Coast Air Quality Management District (SCAQMD) to ensure the facility is operating in accordance with its permit to operate.

Storm Water

The State Water Resources Control Board Industrial General Permit requires industrial facilities to collect, at a minimum, four storm water samples per reporting year and compare them to statewide regulatory limits. On January 28, 2021, a second set of storm water samples was collected. The results from the last two samples continue to indicate ongoing compliance issues with metals, specifically zinc. Samples were also collected from the offsite influent that commingles with BWP's storm water discharge. The offsite samples also exceeded the limits for metals.

In order to address the storm water compliance issues, BWP is in the process of implementing a campus storm water improvement project. BWP has completed an environmental review of the project required under the California Environmental Quality Act (CEQA). The environmental review will be finalized when the project is approved by the Burbank City Council. MNS Engineers was contracted to prepare the final design plans, as well as provide engineering support and permitting support for the project. After the final design is completed, bid specifications will be prepared and a request for proposals (RFP) will be issued for the construction activities. As an interim measure, BWP has also applied for time schedule orders (TSOs) that include interim limits which are achievable for this site. The final TSOs were approved by the Los Angeles Regional Water Quality Control Board on June 7, 2021. These TSOs and interim limits will apply

until the improvement project is complete. Milestone achievements are required, and project completion must be achieved by November 17, 2023.

PROJECT UPDATES:

Power Resources

Renewable Portfolio Standard (RPS) Compliance

BWP continues to be on track to meet RPS compliance requirements for calendar year 2021. The calendar year 2021 goal is 35.75% RPS. BWP staff continues to evaluate renewable resources in order to meet future compliance requirements. Staff will submit the RPS report to the California Energy Commission in August.

On December 22, 2020, the California Energy Commission (CEC) adopted new regulations on several important RPS regulations. The regulations were finalized on July 12, 2021. The CEC provided clarification on how to count resources towards the long term requirement (LTR), which requires that 65% of RPS compliance come from contracts that are 10 years or longer in duration, as well as set new interim targets, post calendar year 2020. The new regulations now comply with the SB 100 requirement of utilities needing to meet a 60% RPS by 2030, meaning that 60% of BWP's retail load requirement will need to come from renewable resources by 2030.

Integrated Resource Plan (IRP) Update

As BWP moves forward with an update to the IRP, it is possible that it may look different and it may be a document that provides a path towards BWP's many compliance requirements. Concurrently, BWP is starting to review options for a new IRP, which is due to the CEC in 2024. Stakeholder engagement efforts, compliance and costs will be some of the major factors in the 2024 IRP.

Transmission Update

Negotiations with LADWP regarding the renewal of several existing transmission service agreements (TSA), including those associated with Hoover and IPP, are ongoing. An amendment for a one-year extension of the existing Hoover TSA was approved by consent by City Council on April 28, 2020. This amendment extended the Hoover TSA through September 30, 2021. **In mid-July, staff worked with LADWP to finalize the TSA documents for both Hoover and IPP. Staff took the agreements to the Board on August 5, 2021 and to City Council on August 10, 2021 and received unanimous approval. These agreements will be signed and forwarded to LADWP in the near future.**

Intermountain Power Project (Delta, UT) Renewal Progress

LADWP, BWP and GWP (the IPP repowering participants) are working together to create a detailed roadmap for green hydrogen production, and power generation at IPP. In the medium-term, the IPP Renewal participants are targeting 30% green hydrogen combustion by July 2025, when the IPP repower project is scheduled to come on-line. On a monthly basis, IPP participants continue to meet to discuss the IPP Renewal, including concerns on facilities development and potential additional resources at the site. At the

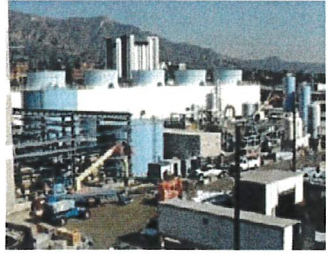
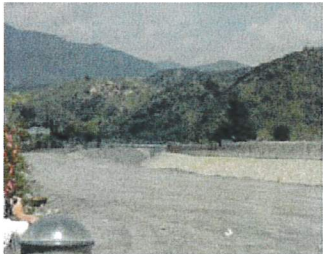
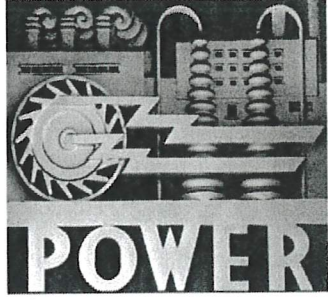
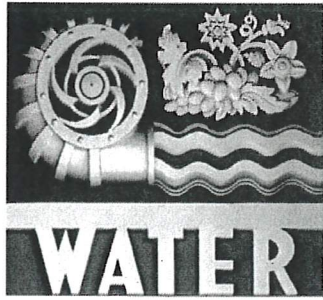
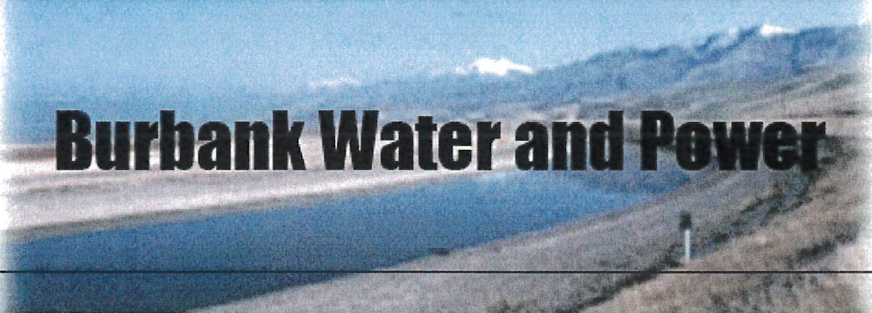
June 3, 2021, BWP Board meeting staff provided an IPP update. The update included details on the IPP renewal contract, costs and how the green hydrogen will be incorporated into the IPP renewal. Staff will provide updates on IPP as costs are refined and as the project breaks ground.

Staff is presently working with IPA and SCPPA on agreements which relate to funding and bond issuances in support of construction at IPP. As these items are finalized, staff will be bringing them to the Board seeking their support and recommendation to City Council.

Power Production

Lake One Power Plant Emissions Retrofit Project

BWP is in the process of developing a bid specification and front-end documents for the retrofit of the Lake One power plant emissions control system. The new emissions control system will allow Lake One to remain in compliance with upcoming SCAQMD requirements. The project consists of designing, engineering, permitting, constructing/installing, commissioning, and testing the new emissions system. This project is planned to conclude in the first half of 2023.



**Financial Report
June-21**

**Burbank Water and Power
Electric Fund (496)
Statement of Changes in Net Assets (1) (2)
MTD and FYTD June 2021
(\$ In 000's except MWh Sales)**

MTD Actual FY 20-21	MTD Budget FY 20-21	\$ Variance	% Variance	NEL MWh	YTD Actual FY 20-21	YTD Budget FY 20-21	\$ Variance	% Variance
91,087	92,663	(1,576)	(2%) (a)		1,015,538	1,086,294	(70,756)	(7%) (A)
				Retail				
\$ 12,965	\$ 13,621	\$ (655)	(5%)	Retail Sales	\$ 151,329	\$ 163,316	\$ (11,987)	(7%)
626	622	4	1%	Other Revenues	5,270	7,464	(2,193)	(29%) (B)
9,844	10,218	374	4% (b)	Retail Power Supply & Transmission	103,656	112,650	8,994	8% (C)
3,748	4,025	(276)	(7%)	Retail Margin	52,944	58,130	(5,186)	(9%)
				Wholesale				
8,271	4,955	3,315	67%	Wholesale Sales	29,504	50,000	(20,496)	(41%)
5,696	4,856	(840)	(17%)	Wholesale Power Supply	21,610	49,000	27,390	56%
2,575	99	2,476	2498% (c)	Wholesale Margin	7,893	1,000	6,893	689% (D)
6,323	4,124	2,199	53%	Gross Margin	60,837	59,130	1,707	3%
				Operating Expenses				
958	958	0	0%	Distribution	10,749	11,438	690	6% (E)
110	110	0	0%	Administration/Safety	1,443	1,489	46	3%
221	221	0	0%	Finance, Fleet, & Warehouse	2,137	2,910	773	27% (F)
525	525	0	0%	Transfer to General Fund for Cost Allocation	6,273	6,296	23	0%
472	472	0	0%	Customer Service, Marketing & Conservation	4,342	5,705	1,363	24% (G)
386	387	0	0%	Public Benefits	3,827	4,637	809	17% (H)
246	246	0	0%	Security/Oper Technology	2,215	2,754	539	20% (I)
110	110	0	0%	Telecom	1,212	1,374	163	12%
187	187	0	0%	Construction & Maintenance	1,536	2,246	710	32% (J)
1,781	1,781	0	0%	Depreciation	17,462	21,374	3,913	18% (K)
4,996	4,997	0	0% (d)	Total Operating Expenses	51,196	60,225	9,029	15%
\$ 1,327	\$ (873)	\$ 2,200	252%	Operating Income/(Loss)	\$ 9,642	\$ (1,095)	\$ 10,737	981%

**Burbank Water and Power
Electric Fund (496)**

**Statement of Changes in Net Assets ^{(1) (2)}
MTD and FYTD June 2021**

(\$ in 000's)

	MTD Budget		YTD Budget		%
	FY 20-21	Variance	Budget	Variance ⁽²⁾	
MTD Actual					
FY 20-21					
\$	1,327	\$ (873)	\$ (1,095)	\$ 10,737	981%
	142	0	1,702	(485)	(28%) ^(L)
	91	0	(1,567)	473	30% ^(M)
	(284)	0	(3,407)	(1)	(0%)
	(51)	0	(3,272)	(12)	(0%)
	1,276	2,200	(4,366)	10,724	246%
	1,054	0	12,651	(11,089)	(88%) ^(N)
\$	2,330	\$ 2,199	\$ 8,285	\$ (364)	(4%)
Operating Income/(Loss)		252%			
Other Income/(Expenses)					
Interest Income		0%			
Other Income/(Expense) ⁽⁴⁾		0%			
Bond Interest/ (Expense)		0%			
Total Other Income/(Expenses)		0% ^(e)			
Net Income		238%			
Capital Contributions (AIC)		0% ^(f)			
Net Change in Net Assets		1689%			

1. This report may not foot due to rounding.

2. () = Unfavorable.

3. Other Revenues include transmission, telecom and internet revenues as well as other items such as damaged property recovery, connection fees, late fees, and tampering fees.

4. Other Income/(Expense) includes a one-time payment to CalPERS (for pension), revenues and expenses related to Low Carbon Fuel Standard credits, and miscellaneous revenue from the sale of scrap materials, inventory, and assets, as well as BABS subsidy.

**Burbank Water and Power
Electric Fund (496)
Statement of Changes in Net Assets - Footnotes
MTD June 2021
(\$ in 000's)**

Foot-note #	Accounts/Description	Actual	Budget	Variance to Budget	Explanation
a.	Electric Usage in MWh	91,087	92,663	(1,576)	NEL is 2% lower than budget, which is driven primarily by the closing of businesses within Burbank due to the pandemic orders beginning on March 19th, 2020, and is partially offset by higher than average temperature in June. The average high temperature was 83.5°F, compared to the 15-year average high temperature of 81.3°F. The average low temperature was 59.1°F, compared to the 15-year average low temperature of 59.2°F. MTD CDD were 206 versus the 15-year average of 168.
b.	Retail Power Supply & Transmission	9,844	10,218	374	The favorable variance is attributable to various components within Retail Power Supply & Transmission. Please refer to page 5 for additional details.
c.	Wholesale Margin	2,575	99	2,476	The wholesale margin is higher than budget driven by heatwaves in the Pacific Northwest and the Southwest.
d.	Total Operating Expenses	4,996	4,997	0	The accounting books have not closed for the month of June 2021 and expenses are estimated at budgeted values.
e.	Total Other Income/(Expenses)	(51)	(51)	0	The accounting books have not closed for the month of June 2021 and total other income/expenses are estimated at budgeted values.
f.	Capital Contributions (AIC)	1,054	1,054	0	The accounting books have not closed for the month of June 2021 and capital contributions are estimated at budgeted values.

**Burbank Water and Power
Electric Fund (496)
Statement of Changes in Net Assets - Footnotes
FYTD June 2021
(\$ in 000's)**

Foot-note #	Accounts/Description	Actual	Budget	Variance to Budget	Explanation
A.	Electric Usage in MWh	1,015,538	1,086,294	(70,756)	- NEL is 7% lower than budget, which is driven primarily by the closing of businesses within Burbank due to the pandemic orders beginning on March 19th, 2020, and is partially offset by warmer summer temperatures. Summer (Jul-Sep) actual average high temperature was 90.1°F, compared to the 15-year average high temperature of 87.7°F. Summer (Jul-Sep) CDD were 1,015 versus the 15-year average of 929.
B.	Other Revenues	5,270	7,464	(2,193)	- Other revenues include transmission, telecom and internet revenues as well as other items such as damaged property recovery, connection fees, late fees, and tampering fees which tend to fluctuate. The unfavorable variance is also attributable to the moratorium on fees in light of the COVID-19 pandemic.
C.	Retail Power Supply & Transmission	103,656	112,650	8,994	- The favorable variance is attributable to various components within Retail Power Supply & Transmission. Please refer to page 6 for additional details.
D.	Wholesale Margin	7,893	1,000	6,893	- The wholesale margin is higher than budget driven by BWP's asset optimization strategy during persistent and record breaking heatwave this past summer.
E.	Distribution	10,749	11,438	690	- The favorable variance is primarily attributable to more capital labor and work for others than planned.
F.	Finance, Fleet, & Warehouse	2,137	2,910	773	- The favorable variance is primarily attributable to vacancies and lower than planned spending on software purchases and professional services.
G.	Customer Service, Marketing & Conservation	4,342	5,705	1,363	- The favorable variance is primarily attributable to vacancies and lower than planned spending on professional services.
H.	Public Benefits	3,827	4,637	809	- Lifeline discounts of \$533k are recorded as a reduction to retail sales but are budgeted as an expense. The balance of the variance is attributable to lower than planned electric retail sales.
I.	Security/Oper Technology	2,215	2,754	539	- The favorable variance is primarily attributable to lower than planned spending on software purchases and professional services.
J.	Construction & Maintenance	1,536	2,246	710	- The favorable variance is primarily attributable to more work for others and capital than planned and to lower than planned spending on building grounds maintenance & repair.
K.	Depreciation	17,462	21,374	3,913	- The favorable variance is primarily attributable to delays in capital projects.
L.	Interest Income	1,217	1,702	(485)	The unfavorable variance is primarily attributable to a lower rate of return than planned.
M.	Other Income/(Expense)	(1,093)	(1,567)	473	- The favorable variance is primarily attributable to higher than planned miscellaneous revenue from the sale of scrap materials, inventory, and assets.
N.	Capital Contributions (AIC)	1,562	12,651	(11,089)	- The unfavorable variance is attributable to the timing of AIC projects.

June 2021 Budget to Actual P&L Variance Highlights - Electric Fund
(\$ in 000's)

	Variance Month-to-Date		
	<u>Favorable Items</u>	<u>Unfavorable Items</u>	<u>Budget to Actual Variance</u>
<u>MTD NET INCOME/(LOSS): \$1,276</u>	\$ 2,200	\$ -	\$ 2,200
 <u>MTD GROSS MARGIN VARIANCE</u>			
Retail Sales	-	(655)	(655)
Power Supply and Transmission:			
- Lower retail load	33	-	33
- Lower than planned renewables cost and other	793	-	793
- Lower transmission	215	-	215
- Higher energy prices offset by retail load management	-	(416)	(416)
- Prior period adjustment	-	(251)	(251)
Other Revenues	4	-	4
Wholesale Margin	2,476	-	2,476
Total	<u>\$ 3,521</u>	<u>\$ (1,322)</u>	<u>\$ 2,200</u>

June 2021 Budget to Actual P&L Variance Highlights - Electric Fund
(\$ in 000's)

	Month-to-Date		
	Variance Fiscal Year-to-Date		
	Favorable Items	Unfavorable Items	Budget to Actual Variance
<u>FYTD NET INCOME/(LOSS): \$6,358</u>	\$ 10,724	-	\$ 10,724
<u>FYTD GROSS MARGIN VARIANCE</u>			
Retail Sales	-	(11,987)	(11,987)
Power Supply and Transmission			
- Lower retail load	1,468	-	1,468
- Prior period true up credits and adjustments	1,457	-	1,457
- Lower transmission	1,005	-	1,005
- Financing savings	417	-	417
- Higher than planned renewables cost and other	-	(274)	(274)
- Lower O&M	1,113	-	1,113
- Lake Unit Repairs	-	(1,014)	(1,014)
- Retail load management and economic dispatch offset by higher energy prices	5,073	-	5,073
- Prior period adjustment	-	(251)	(251)
Other Revenues	-	(2,193)	(2,193)
Wholesale Margin	6,893	-	6,893
Total	\$ 17,427	\$ (15,720)	\$ 1,707
<u>FYTD O&M AND OTHER VARIANCES</u>			
Distribution	690	-	690
Administration/Safety	46	-	46
Finance, Fleet, & Warehouse	773	-	773
Customer Service, Marketing & Conservation	1,363	-	1,363
Public Benefits	809	-	809
Security/Oper Technology	539	-	539
Telecom	163	-	163
Construction & Maintenance	710	-	710
Depreciation expense	3,913	-	3,913
All other	11	-	11
Total	\$ 9,017	\$ -	\$ 9,017

**Burbank Water and Power
Electric Fund (496)
Statement of Cash Balances ^(a)
(\$ in 000's)**

	Jun-21	Mar-21	Dec-20	Sep-20	Jun-20	Jun-19	Recommended Reserves	Minimum Reserves
Cash and investments								
General Operating Reserve	\$ 73,291	\$ 70,186	\$ 65,223	\$ 65,133 ^(b)	\$ 52,719 ^{(b)(c)}	\$ 67,320 ^(b)	\$ 52,010	\$ 37,570
Capital & Debt Reduction Fund	10,000	10,000	10,000	10,000	10,000	10,000	21,000	5,200
BWP Projects Reserve Deposits at SCPPA ^(d)	3,740	4,210	6,021	3,769	17,163	16,817		
Sub-Total Cash and Investments	<u>87,031</u>	<u>84,396</u>	<u>81,244</u>	<u>78,902</u>	<u>79,882</u>	<u>94,137</u>	<u>73,010</u>	<u>42,770</u>
Customer Deposits	(4,245)	(2,722)	(3,083)	(1,486)	(1,811)	(5,641)		
Public Benefits Obligation	(8,216)	(8,198)	(8,287)	(7,826)	(6,990)	(6,069)		
Pacific Northwest DC Intertie	-	-	(45)	(48)	(62)	(2,218)		
Low Carbon Fuel Standard ^(e)	(2,999)	(2,470)	(3,273)	(3,394)	(3,642)	(2,267)		
Cash and Investments (less Commitments)	<u>71,570</u>	<u>71,005</u>	<u>66,556</u>	<u>66,149</u>	<u>67,376</u>	<u>77,942</u>	<u>73,010</u>	<u>42,770</u>

^(a) The Statement of Cash Balances may not add up due to rounding.

^(b) Includes a \$3.95M loan to the Water Fund for the purchase of cyclic storage water.

^(c) Denotes funds reserved related to the sale of Low Carbon Fuel Standard (LCFS) credits, net of Electric Vehicle charger infrastructure expenditures.

^(d) Includes early redemption of the 2010A Electric Bonds (\$7.63M).

^(e) Includes a \$2.5M loan to the Water Fund for the purchase of cyclic storage water.

^(f) Includes a one-time payment to CalPERS (for pension) in the amount of \$2.75M.

^(g) Includes a \$4.4M drawdown to pay SCPPA for June and July power invoices, \$4.6M for August and September power invoices, and \$2.3M for December and January power invoices.

**Burbank Water and Power
Water Fund (497)
Statement of Changes in Net Assets ^{(1) (2)}
MTD and FYTD June 2021
(\$ In 000's except Gallons)**

MTD Actual FY 20-21	MTD Budget FY 20-21	\$ Variance	% Variance	YTD Actual FY 20-21	YTD Budget FY 20-21	\$ Variance	% Variance
499	467	31	7% ^(a)	5,404	5,134	270	5% ^(A)
115	105	10	10%	976	995	(19)	(2%) ^(B)
\$ 2,542	\$ 2,627	\$ (85)	(3%)	\$ 28,384	\$ 27,702	\$ 682	2%
461	427	34	8%	3,924	4,052	(128)	(3%)
123	122	1	1%	1,536	1,462	75	5%
3,126	3,175	(49)	(2%)	33,844	33,216	629	2%
1,159	1,107	(52)	(5%) ^(b)	12,131	12,324	193	2% ^(C)
1,967	2,069	(102)	(5%)	21,714	20,892	821	4%
502	502	0	0%	7,914	8,760	845	10% ^(D)
142	141	0	0%	1,465	1,695	230	14%
207	207	0	0%	1,940	2,522	582	23% ^(E)
175	175	0	0%	2,101	2,101	-	0%
356	355	0	0%	3,884	4,263	379	9% ^(F)
1,381	1,381	0	0% ^(c)	17,303	19,340	2,037	11%
586	688	(102)	(15%)	4,410	1,552	2,858	184%
21	21	0	0%	203	257	(54)	(21%)
45	45	0	0%	(203)	6	(209)	(3249%) ^(G)
(158)	(158)	0	0%	(1,745)	(1,900)	155	8%
(92)	(92)	0	0% ^(d)	(1,745)	(1,637)	(108)	(7%)
494	595	(102)	(17%)	2,665	(85)	2,751	3229%
94	94	0	0% ^(e)	231	1,124	(893)	(79%) ^(H)
\$ 588	\$ 689	\$ (102)	(15%)	\$ 2,896	\$ 1,039	\$ 1,858	179%

1. This report may not foot due to rounding.

2. () = Unfavorable

3. Other Revenue includes items such as fire protection services, damaged property recovery, connection fees, late fees, and tampering fees.

4. Other Income/(Expense) includes a one-time payment to CalPERS (for pension) and miscellaneous revenue from the sale of scrap materials, inventory, and assets.

**Burbank Water and Power
Water Fund (497)
Statement of Changes in Net Assets - Footnotes
MTD June 2021
(\$ in 000's except Gallons)**

Foot- note #	Accounts/Description	Actual	Budget	Variance to Budget	Explanation
a.	Water put into the system in Millions of Gallons	499	467	31	- Potable water demand was higher than budget, which was driven by higher than average temperature in June. The average high temperature was 83.5°F, compared to the 15-year average high temperature of 81.3°F. The average low temperature was 59.1°F, compared to the 15-year average low temperature of 59.2°F. MTD CDD were 206 versus the 15-year average of 168.
b.	Water Supply Expense	1,159	1,107	(52)	- The unfavorable variance was primarily a result of higher demand.
c.	Total Operating Expenses	1,381	1,381	0	- The accounting books have not closed for the month of June 2021 and expenses are estimated at budgeted values.
d.	Other Income/(Expense)	45	45	0	- The accounting books have not closed for the month of June 2021 and total other income/expenses are estimated at budgeted values.
e.	Aid in Construction	94	94	0	- The accounting books have not closed for the month of June 2021 and capital contributions are estimated at budgeted values.

**Burbank Water and Power
Water Fund (497)
Statement of Changes in Net Assets - Footnotes
FYTD June 2021
(\$ in 000's except Gallons)**

Foot- note #	Accounts/Description	Actual	Budget	Variance to Budget	Explanation
A.	Water put into the system in Millions of Gallons	5,404	5,134	270	- Potable water demand is higher than budget, which is driven by warmer summer temperatures and a drier winter, offset by the closing of businesses within Burbank due to the pandemic orders beginning on March 19th, 2020. Summer (Jul-Sep) actual average high temperature was 90.1°F, compared to the 15-year average high temperature of 87.7°F. Summer (Jul-Sep) CDD were 1,015 versus the 15-year average of 929. Burbank received 4.9 inches of rainfall FYTD as compared to the normal of 13.8 inches.
B.	Metered Recycled Water in Millions of Gallons	976	995	(19)	- FYTD Recycled water demand was lower than budget as a result of the MPP major overhaul, offset by warmer summer temperatures and a drier winter. Summer (Jul-Sep) actual average high temperature was 90.1°F, compared to the 15-year average high temperature of 87.7°F. Summer (Jul-Sep) CDD were 1,015 versus the 15-year average of 929. Burbank received 4.9 inches of rainfall FYTD as compared to the normal of 13.8 inches.
C.	Water Supply Expense	12,131	12,324	193	- The favorable variance is a result of using more Valley/BOU water which is less costly than imported MWD water.
D.	Operations & Maintenance - Potable	7,914	8,760	845	- The favorable variance is primarily attributable to vacancies and lower than planned spending on professional and private contractual services.
E.	Operations & Maintenance - Shared Services	1,940	2,522	582	- The favorable variance is attributable to lower than planned shared expenses (Customer Service, Finance and Administration).
F.	Depreciation	3,884	4,263	379	- The favorable variance is primarily attributable to delays in capital projects.
G.	Other Income/(Expense)	(203)	6	(209)	Other Income/(Expense) include miscellaneous revenue from the sale of scrap materials, inventory, and assets, which tend to fluctuate.
H.	Aid in Construction	231	1,124	(893)	- The unfavorable variance is attributable to the timing of AIC projects.

June 2021 Budget to Actual P&L Variance Highlights - Water Fund
(\$ in 000's)

	Variance Month-to-Date		
	<u>Favorable Items</u>	<u>Unfavorable Items</u>	<u>Budget to Actual Variance</u>
<u>MTD NET INCOME (LOSS): \$494</u>	\$ -	\$ (102)	\$ (102)
<u>MTD GROSS MARGIN VARIANCE</u>			
Potable Revenues	-	(85)	(85)
Recycled Revenues	34	-	34
Other Revenue	1	-	1
Water Supply Expense	-	(52)	(52)
Total	<u>35</u>	<u>\$ (137)</u>	<u>\$ (102)</u>

June 2021 Budget to Actual P&L Variance Highlights - Water Fund
(\$ in 000's)

	Variance Fiscal Year-to-Date		
	<u>Favorable Items</u>	<u>Unfavorable Items</u>	<u>Budget to Actual Variance</u>
<u>FYTD NET INCOME: \$2,665</u>	\$ 2,751	\$ -	\$ 2,751

FYTD GROSS MARGIN VARIANCE

Potable Revenues	682	-	682
Recycled Revenues	-	(128)	(128)
Other Revenue	75	-	75
Water Supply Expense	193	-	193
Total	<u>\$ 949</u>	<u>\$ (128)</u>	<u>\$ 821</u>

FYTD O&M AND OTHER VARIANCES

Potable O&M	845	-	845
Recycled Water O&M	230	-	230
Allocated O&M	582	-	582
Depreciation Expense	379	-	379
All Other	-	(108)	(108)
Total	<u>\$ 2,037</u>	<u>\$ (108)</u>	<u>\$ 1,929</u>

Water Fund (497)
Statement of Changes in Cash and Investment Balances ^(a)
(\$ in 000's)

	Jun-21	Mar-21	Dec-20	Sep-20	Jun-20	Jun-19	Recommended Reserves	Minimum Reserves
Cash and Investments								
General Operating Reserves	\$ 12,459	\$ 15,066	\$ 13,972	\$ 10,972 ^(e)	\$ 8,395 ^{(e)(d)}	\$ 11,555 ^(b)	\$ 12,630	\$ 8,070
Capital Reserve Fund	2,220	2,220	2,220	2,220	2,220	2,220	5,200	1,300
Sub-Total Cash and Investments	14,679	17,286	16,192	13,192	10,615	13,775	17,830	9,370
Customer Deposits	(1,125)	(1,151)	(1,311)	(1,133)	(1,227)	(1,454)		
Cash and Investments (less commitments)	\$ 13,554	\$ 16,136	\$ 14,882	\$ 12,060	\$ 9,388	\$ 12,321	\$ 17,830	\$ 9,370

^(a) The Statement of Cash Balances may not add up due to rounding.

^(b) Includes a \$3.95M loan from the Electric Fund for the purchase of cyclic storage water.

^(c) Includes early redemption of the 2010A Water Bonds (\$2.07M).

^(d) Includes a \$2.5M loan from the Electric Fund for the purchase of cyclic storage water.

^(e) Includes a one-time payment to CalPERS (for pension) in the amount of \$440k.