Staff Report Item 17

TO: East Bay Community Energy Board of Directors

FROM: Dan Lieberman, Marketing Director

SUBJECT: **Approve Non-Standard Pricing Rate Agreement Policy and Adopt a Resolution Authorizing CEO to Negotiate and Execute Non-Standard Pricing Rate Agreements (Action Item)**

DATE: September 18, 2019

Recommendation

Approve the Non-Standard Pricing Rate Agreement Policy and delegate to Chief Executive Officer (CEO) the authority to negotiate and execute long-term, non-standard pricing rate agreements with customers in EBCE's service area that have:

1. one or more accounts on Direct Access and place those accounts on EBCE service, and/or
2. have been granted new or additional Direct Access allocation and remain on EBCE service for those accounts

In order to retain significant foundational baseline load and avoid potential increases in greenhouse gas emissions associated with the electric service to large users within member communities.

Background and Discussion

EBCE's customers can opt out anytime. That option is granted universally to all EBCE accounts, even those that consume millions of kilowatt-hours (kWh) each year. Since launching to commercial customers in June 2018, EBCE's opt out rate has remained below five percent. However, until recently, most large commercial accounts have only been able to choose between PG&E and EBCE, and EBCE offers a better value proposition (lower rates and greener power).

In October 2018, SB 237 was signed expanding electricity procurement options for some of EBCE's large customers. The law increases the annual maximum allowable limit of the Direct Access service program, by which large customers can contract directly for the purchase of power from third-party vendors, by 4,000 gigawatt hours (GWh) for non-residential customers. There is discussion about further expansion of Direct Access beyond what SB 237 allows.

On September 10, 2019 PG&E notified EBCE of the aggregate amount of load granted the opportunity to depart EBCE to a third-party provider; that is 222 GWh. Most of that that load is from medium and large commercial and industrial accounts. There is a significant and immediate flight risk for EBCE regarding the possible departure of some of our largest customers – with both financial and environmental impacts

On August 12, 2019, PG&E notified customers on the Direct Access waitlist about their lottery status. Since then, two of EBCE's largest account holders notified us that they are considering departing EBCE for Direct Access service, unless we can offer competitive prices for long-term contracts. After further discussion and negotiation, one of those accounts notified us on September 6 that they do intend to opt out of EBCE service. The customer confirmed that EBCE's negotiated offer was competitive with those received from other Electric Service Providers, but the customer was unwilling to wait for EBCE to seek Board approval and granted the contract to another provider.

Therefore, EBCE is exposed to ongoing risk of wide swings in power consumption and revenue. Having a stable and forecastable load helps keep rates stable for all EBCE accounts and allows EBCE to allocate more funds to priority areas such as the Local Development Business Plan. The strategic operational advantage for EBCE in securing longer term commitments with our largest customers include: 1) the more certainty EBCE has in regard to load forecasting and projected energy sales, the more informed it can be in negotiating prices in energy procurement contracts, and 2) a larger energy load means EBCE can assign lower fixed costs per kWh for all customers. That allows EBCE to pass savings along to all EBCE customers.

Perhaps the most important reason for keeping customers on EBCE service rather than having them enroll in third party service is to reduce greenhouse gas (GHG) emissions, as EBCE's power mix is far cleaner than that of most Direct Access providers. EBCE staff analyzed the 2017 (most recent available) Power Content Labels of all of the 13 Electric Service Providers that provided Direct Access service to customers in EBCE's service area, and found that the average renewable energy content was 28%, and an average of 68% of their power from unspecified sources. Three of those providers delivered 0% renewable energy. Each of EBCE's service options delivered at least 41% renewable energy in 2018, with an additional ~50% from hydropower. Therefore, customers moving from EBCE service to Direct Access would likely be purchasing power with a higher emissions factor, and vice versa.

In sum, retaining large customers is essential to achieving EBCE's goals – to provide communities with greener power at competitive rates, enable reductions in community-wide GHG emissions, and maintain a strong financial foundation. Experience shows it is possible for EBCE to retain these customers using a cost-based rate; which ensures there is no economic downside. However, losing a large customer to Direct Access has a clear economic downside for EBCE and our customers. In addition, the action of the customer departing will likely lead to increased emissions, and the lost opportunity of partnering with that customer on transformational programs.

It is worth noting that EBCE's largest accounts are not currently benefitting from a volume discount. In fact, in many cases the large accounts pay more per kilowatt-hour to EBCE than most of our residential accounts. The generation component of an E1 residential rate is $0.08537 per kWh, while an E19-S commercial/industrial accounts pays $0.08571 per kWh on average or and E20-P large industrial pays $0.08799 per kWh on average.

There is precedence for allowing a load-serving entity to negotiate special rates with large customers. For example:

- Peninsula Clean Energy's Board of Directors approved a Volume Pricing Program for Qualified Commercial and Industrial Customers. In order to qualify for Volume Pricing, a customer would need to consume a minimum of 10 GWh annually and would need to commit to a 3- or 5-year exclusive contract with PCE for energy services.
- Silicon Valley Clean Energy's Board of Director's approved a Non-Standard Pricing Agreement Policy and Resolution Delegating Authority to the CEO to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers. This policy applies to customers on large commercial and industrial rates with an annual load greater than 10 GWh.
- Silicon Valley Power, the municipal utility that serves the City of Santa Clara, negotiates volume discounts with customers that use a large amount of power, but those rates are kept confidential.

Many of EBCE's largest accounts have expressed interest in signing longer-term agreements with EBCE in order to obtain more rate certainty. Concurrently, EBCE has recently signed seven long-term contracts for solar, wind, and battery storage. The expansion of Direct Access under SB237 will allow load to depart in January 2021. So

EBCE's temporal interests are well aligned with those of customers departing for Direct Access. If EBCE can create longer-term rate certainty for these customers, that would likely reduce opt outs and also make conditions favorable for currently non-participating accounts. This can be done without financially harming, but rather likely financially benefitting, other EBCE customers.

Non-Standard Pricing Rate Agreement
EBCE recommends offering to negotiate special long-term rates for those non-residential accounts on Direct Access or granted a Direct Access allocation. In preliminary discussions, those account holders expressed a variety of preferences: various term lengths, pricing structures, preference level for renewable energy, etc. Therefore, EBCE suggests allowing individual negotiations to occur, so long as the resulting tariff is in the interest of all EBCE customers. This would require:

- Rates that are cost-based
- Rate that do not transfer the risk of Power Charge Indifference Adjustment (PCIA) rate changes onto EBCE
- Rates designed to achieve some level of contribution to EBCE's fixed cost, reserve margin, and programs
- Provide power that is at least as low-emitting as, and with at least as much renewable energy content as, Bright Choice (or any successor service option).
- Leverage an opportunity to prevent departing load or gain load previously on Direct Access service.

Procedurally, EBCE staff would negotiate the rates, assuring that the objectives above are met. Then EBCE staff would report the rate agreement to the Board in closed session.

Fiscal Impact

On September 10, 2019 EBCE received from PG&E a preliminary report containing the aggregate hourly peak demand and hourly load data for the past year for our mutual customers who have indicated their intent to switch from EBCE to Direct Access service. The report only includes customers who have notified PG&E of their decision as of September 3, 2019, the deadline for customers to inform PG&E of their decision. The report indicates the departing load at about 222 gigawatt-hours (GWh) (or 222,000,000 kWh) annually.

Based on an earlier report from PG&E, over 80% of EBCE customers in the queue for Direct Access were on E19 or E20 rate schedules. Using the Joint Rate Comparison prepared by PG&E, we used the annualized average generation service rate for an E19 account on Bright Choice: ~$0.08 in revenue per kWh. That figure includes demand charges.

222,000,000 kWh/year x $0.08/kWh = $17,760,000/year

Therefore, $17.8 million is an estimate of the amount of potential lost annual revenue for EBCE from Direct Access load departure.

On February 10, 2020, PG&E will provide EBCE with a final report that includes the aggregate hourly peak demand and hourly load data for customers who have submitted an electronic switching request, the Direct Access Switching Request (DASR) as of February 3, 2020. The switch will take place on or after January 1, 2021 for customers moving onto Direct Access service.

Attachments

A. Resolution to Adopt the Non-standard recommended rate policy
B. Non-Standard Pricing Rate Agreement Policy

RESOLUTION NO.__

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO ADOPT THE NON-STANDARD PRICING RATE AGREEMENT POLICY AND DELEGATE AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENTS IN ACCORDANCE WITH THAT POLICY

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

WHERAS, The East Bay Community Energy Authority ("EBCE") was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq*., among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

WHEREAS, commercial and industrial customers make up a substantial majority of EBCE's electric load;

WHEREAS, commercial and industrial customers are critical partners in helping EBCE and its member agencies reduce carbon emissions and meet climate action planning goals;

WHEREAS, the state of California adopted new legislation to re-open the cap for Direct Access (DA) to the wholesale markets for commercial and industrial customers under SB 237 in September 2018;

WHEREAS, in the expanded DA marketplace, current EBCE commercial and industrial customers may opt out to receive DA service under more flexible or lower-cost tariff structures;

WHEREAS, EBCE seeks to provide clean electricity services that meet customer needs, at rates that are competitive and contribute positively to EBCE's financial position;

WHEREAS, the DA marketplace is highly competitive, requiring that EBCE structure non-standard pricing rate agreement terms in a highly responsive, time-sensitive fashion;

WHEREAS, EBCE wishes to offer non-standard pricing rate agreements to retain eligible commercial and industrial accounts, under the terms of the attached 'Non-Standard Pricing Rate Agreement Policy'

WHEREAS, commercial and industrial accounts soliciting competitive bids for DA service may require contact signing from the supplier on the same day the bids are submitted;

WHEREAS, in order to expedite the approval of non-standard pricing rate agreements consistent with Direct Access marketplace requirements, the Board wishes to delegate to the Chief Executive Officer the authority to negotiate directly with eligible commercial and industrial accounts in accordance with the Board approved Non-Standard Pricing Rate Agreement Policy.

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

Section 1. The Board hereby adopts the Non-Standard Pricing Rate Agreement Policy attached as Exhibit A and listed as Policy #___.

Section 2. The Board hereby delegates authority to the Chief Executive Officer to negotiate and execute non-standard pricing rate agreements with eligible commercial and industrial customers, provided that the pricing agreements meet the minimum requirements set forth in the Non-Standard Pricing Rate Agreement Policy.

ADOPTED AND APPROVED this _______day of ___________________, 2018.

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Dan Kalb, Chair

ATTEST:

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Stephanie Cabrera, Secretary

EAST BAY COMMUNITY ENERGY
NON-STANDARD PRICING RATE AGREEMENT POLICY

When offering non-standard pricing rate agreements for electric generation service to eligible customers, EBCE adheres to a defined nonstandard pricing rate agreement policy. Under this policy, the non-standard pricing rate agreement must comply with the following requirements:

1. The agreement must be with a large commercial, industrial, or agricultural customers with one or more accounts on Direct Access or granted a Direct Access allocation,

2. the agreement must be marginal cost-based and account for any volume and/or price risk, including risk associated with investor-owned utility fees,

3. the agreement must be priced to allow EBCE to cover variable costs and achieve some level of contribution to fixed cost, reserve margin, and programs,

4. the agreement must require a commitment level from the customer (e.g. volume, length of term) commensurate with the non-standard pricing rate agreement offered to the customer,

5. the agreement must provide power that is at least as low emitting as, and with at least as much renewable energy content as, the Bright Choice or other EBCE baseline standard service, and

6. the agreement must be used to leverage an opportunity to prevent departing load or gain load previously on Direct Access service.