



Staff Report Item 8

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer
Leah Goldberg, General Counsel

SUBJECT: Discussion of Potential Amendments to the Joint Powers

DATE: Agreement March 21, 2018

Recommendation

Discuss potential amendments to the East Bay Community Energy Authority Joint Powers Agreement and give direction to staff with respect to any amendments to bring back to the Board for consideration, after providing proper notice.

Background and Discussion

Section 8.4 of the East Bay Community Energy Authority Joint Powers Agreement (“JPA Agreement”) allows amendments to the JPA Agreement by a two-thirds affirmative vote of the entire board after a 30-day notice to all parties of the proposed amendments.

On October 18, 2017, the EBCE Board adopted a process for considering policy and JPA Agreement Amendments. That policy obligates the CEO to bring potential JPA amendments to the Board in March and September for discussion. A majority of the Board will need to indicate support for a policy amendment or JPA Agreement amendment for the proposed amendment to be noticed for Board action.

EBCE staff identified three issues that require policy guidance and possible amendment of the JPA Agreement: 1) Compensation to Community Advisory Committee members to offset their costs of attending meetings; 2) appointing alternates to the Community Advisory Committee; and 3) updating the JPA Agreement timeline for completion of the Local Development Business Plan.

1. Should EBCE provide compensation to Community Advisory Committee members to attend Community Advisory Committee meetings?

Section 4.9 of the JPA Agreement states in pertinent part: “The Board of Directors shall determine whether the Community Advisory Committee members will receive a stipend and/or be entitled to reimbursement for expenses.”

Argument in favor: The Community Advisory Committee has been having a hard time establishing a quorum. Reimbursement of expenses might assist in prompting some members to attend thereby making it easier to establish a quorum.

Argument against: Providing a stipend to Community Advisory Committee members will increase the operating expense of the JPA.

2. Should the JPA Agreement be amended to provide for alternate members of the Community Advisory Committee?

Section 4.9 of the JPA Agreement obligates the Board to appoint nine members to the Community Advisory Committee representing a diverse cross section of interests, skill sets, and geographic regions. As it reads now, the JPA Amendment does not contemplate alternate members.

Argument in favor: Adding alternate members increases the chance that the Community Advisory Committee will have a quorum at its meetings. Alternate members might add a different perspective that could enhance the advice given the Board. Adding alternates increases the number of community members involved with EBCE.

Argument against: The Community Advisory Committee’s composition is intended to provide for a diverse cross section of interests, skill sets, and geographic representation. Alternates would need to match the qualifications of the member or members for which the alternate serves. It could be a difficult, if not impossible, task to match the qualifications. Additionally, having alternates potentially sends a message that attendance at a Community Advisory Committee meeting is optional. It might be more prudent to emphasize the importance of attending meetings when appointing members initially or establishing policies terminating members that fail to attend meetings.

3. Should the JPA Agreement be amended to update the timing on the Local Development Business Plan?

Section 5.4 of the JPA Agreement requires completion of the Local Development Business Plan “no later than eight (8) months after the seating of the Authority Board of Directors.” This timeline would have required completion of the Business Plan on or before October 16, 2017. While the Local Development Business Plan is well underway, the deadline set in the JPA has passed. Rather than simply rushing to complete the plan, staff believes it would be more prudent to modify the JPA Agreement date for completion of the Local Development Business Plan to April 30, 2018 or other reasonable date.

Argument in favor: Modifying the JPA Agreement to set a realistic deadline for completing the Local Development Business Plan would keep EBCE in compliance with the JPA Agreement and would allow for robust community and staff vetting of the proposed plan.

Argument against: Leaving the date as is will force completion of the Local Development Business Plan as soon as possible.

Fiscal Impact

Providing direction to staff on whether the above proposed JPA Amendments should be noticed and considered in accordance with the JPA Agreement will have no fiscal impacts.

CEQA Considerations

Not a project.