



## **Board of Directors Meeting**

Wednesday, May 15, 2019

6:00 pm

City of Hayward  
Council Chambers  
777 B Street,  
Hayward, CA 94544

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or [Scabrera@ebce.org](mailto:Scabrera@ebce.org).*

*If you have anything that you wish to be distributed to the Board, please hand it to the clerk who will distribute the information to the Board members and other staff. Please bring at least 25 copies.*

### **1. Welcome & Roll Call**

### **2. Pledge of Allegiance**

### **3. Public Comment**

*This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.*

## **CONSENT AGENDA**

### **4. Approval of Minutes from April 17, 2019**

### **5. Contracts entered into (Informational Item)**

**REGULAR AGENDA**

**6. CEO REPORT**

- A. Executive Committee Meeting; and
- B. Marketing and Outreach update;

**7. Community Advisory Committee Report**

**8. Battery Demand Response Pilot (Action Item)**

Receive an update and approve the Battery Demand Response Pilot.

**9. Rate Modification Report (Informational Item)**

Receive an update from staff regarding EBCE rate modifications.

**10. EBCE Value Proposition Update/Rate Setting Process (Action Item)**

Approve a resolution adopting a process for updating the EBCE value proposition and rate setting for Fiscal Year 2019/2020.

**11. Joint CCA Cost-Sharing and Reimbursement Agreement and ACES (Action Item)**

Approve a resolution authorizing the CEO to execute an agreement between EBCE and four CCA programs (Peninsula Clean Energy, Silicon Valley Clean Energy, City of San Jose Clean Energy, and Monterey Bay Community Power, collectively the “Joint CCAs”) to share costs of certain consultant services.

**12. Legislative Update (Informational Item)**

Receive Legislative update from Weideman Group

**13. Board Member and Staff Announcements including requests to place items on future Board Agendas**

**14. Adjournment to:**

**Board Retreat**

Wednesday June 5, 2019

Location: City of Dublin  
Regional Meeting Room  
100 Civic Plaza  
Dublin CA 94568



**\*Draft Minutes\***

**Board of Directors Meeting**

Wednesday, April 17, 2019

6:00 pm

City of Hayward  
Council Chambers  
777 B Street,  
Hayward, CA 94544

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*If you have anything that you wish to be distributed to the Board, please hand it to the clerk who will distribute the information to the Board members and other staff. Please bring at least 25 copies.*

**1. Welcome & Roll Call**

**Present:** Directors Pilch (Albany), Hernandez (Dublin), Martinez (Emeryville), Bacon (Fremont), Mendall (Hayward), Munro (Livermore), Rood (Piedmont), Lopez (San Leandro), Vernaci-Dutra (Union City), Eldred (Community Advisory), Vice-Chair Kalb (Oakland) , and Chair Haggerty (Alameda County)

**Excused:** Arreguin (Berkeley)

**2. Pledge of Allegiance**

**3. Public Comment**

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**Barbara Stebbins** - Requested that the Board agendize the LDBP and continue to engage with staff and the public to keep the LDBP and the forefront. Ms. Stebbins also shared concerns with changes to early action items.

## CONSENT AGENDA

4. Approval of Minutes from March 20, 2019
5. Contracts entered into (Informational Item)

The Board requested that staff create only one agreement per vendor to ensure \$100,000 signing limit is not exceeded.

Director Mendall motioned to approve the consent agenda as amended:

- A. Correct date on minutes to 3/20/19

Director Pilch seconded the motion which carried 10/0; Excused: Vice-chair Kalb

## REGULAR AGENDA

### 6. CEO REPORT

- A. Executive Committee Meeting;
- B. New Staff;
- C. Marketing and Outreach update;
- D. Update on Opt-out

### 7. Community Advisory Committee Report

The Chair reported on the 4/15/19 CAC meeting stating that Vice-Chair O'Neil vacated her seat and Member Sutter has been elected as interim vicechair. The Chair also reminded the Board of three committee seats becoming available at the end of June and thanked Staff for the Community Grant, working with the public, and incorporating input.

### 8. Treasurer's Report (Informational Item)

Receive report on EBCE cash position.

The Board discussed:

- Board requested additional information on why EBCE does not bank with Barclays.
- Reserve requirements
- Additional information on River City branch locations

### 9. Appointment of Interim General Counsel (Action Item)

Adopt a resolution appointing Inder Khalsa of Richards, Watson, and Gershon (RWG) as Interim General Counsel to the EBCE and authorizing the Chair to execute an amendment to the Legal Services Agreement between EBCE and RWG.

Vice-Chair Kalb motioned to adopt a resolution to appoint Inder Khalsa of Richards, Watson and Gershon as Interim General Counsel. Director Martinez seconded the motion which carried 11/0; Excused: Director Arreguin

**10. Demand Response Program (Action Item)**

Approve the proposed Demand Response program, called PDP-EBCE to be offered to up to 100 A10 (Small Commercial)/ E19 (Large Commercial/Industrial)/ E20 (Largest Commercial/Industrial) customers as a way to encourage continued demand response in exchange for a bill credit on par with current the PG&E PDP program

The Board Discussed load shapes.

Director Dutra-Vernaci motioned to approve the proposed Demand Response program. Director Mendall Seconded the motion which carried 11/0; Excused: Director Arreguin

R-2019-7

**11. Board Member and Staff Announcements including requests to place items on future Board Agendas**

The Chair requested to add the CAC Appointment discussion to the April 26, 2019 Executive committee meeting agenda.

**12. Adjourned**



## Consent Item 5

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Nick Chaset, Chief Executive Officer  
**SUBJECT:** Contracts Entered into  
**DATE:** May 9, 2019

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### RECOMMENDATION

Accept the CEO's report on contracts entered into between April 18, 2019 through May 9, 2019;

1. C-2019-28 Second Amendment to Consulting Services Agreement with Circlepoint (Oakland), amends Agreement termination date to August 30, 2019. Does not add any additional funding.
2. C-2019-30 Sponsorship Agreement with Alameda County Agricultural Fair Association in the amount of \$5,000, which will allow EBCE to set up a booth at the fair for the duration of the fair.
3. C-2019-31 Amendment 6 to Exhibit A with SMUD, increases monthly compensation by \$5,000 per month for MSUD to provide daily downloads of processed Share My Data to EBCE.
4. C-2019-32 Amendment 7 to Exhibit B with SMUD, increases annual compensation to SMUD by \$12,000 for a report of legacy NEW customers who did not come to parity or benefit from EBCE's true-up versus PG&E's annual true-up policy.
5. C-2019-33 Consulting Services Agreement with California Strategies (Sacramento), not to exceed \$12,000 for strategy sessions to maximize state and local funding opportunities.



### Staff Report Item 6

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** CEO Report (Informational Item)

**DATE:** May 15, 2019

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#### **Recommendation**

Accept Chief Executive Officer (CEO) report on update items below.

#### **Executive Committee Meeting**

East Bay Community Energy held an Executive Committee meeting on April 26<sup>th</sup>, 2019 where the agenda included an overview of the CA renewables RFP and an update on current legislation.

#### **Marketing and Outreach Update**

Attached to this report is a presentation outlining key marketing and outreach activities including an overview of opt out trends.



# Account Services and Marketing Update

PRESENTED BY: ANNIE HENDERSON

DATE: May 15, 2019





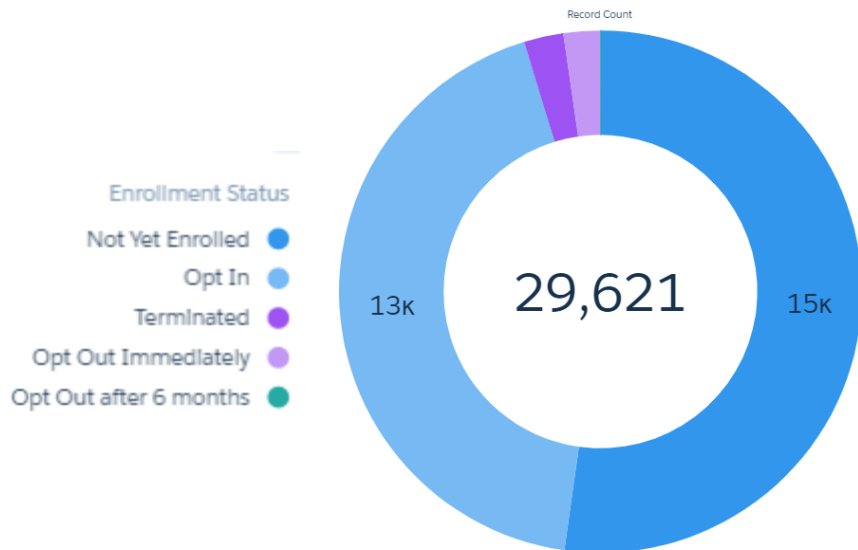
# ENROLLMENT AND ACCOUNT SERVICES



# Enrollment

Enrollment Stats as of May 2, 2019		
Accounts Enrolled	~540,000	
Actual Total Cost Savings to Date	\$4.925M	
Estimated Cost Savings for 2019	\$7.372M	
	<i>By Count</i>	<i>By Load</i>
Overall Opt Out Rate	3.5%	3.0%
Residential Opt Out Rate	3.8%	1.5%
Commercial Opt Out Rate	2.6%	1.5%

# NEM/Solar Enrollment



Enrollment Status	Accounts	Opt Out Rate
Not Yet Enrolled	12,757	
Opt In	15,465	4.48%
Opt Out	726	
Total	28,948	2.5%

Data as of May 2, 2019

# Account Services

- NEM Customers
  - Enrolled **first group** of NEM customers in April
  - **Second notice** going out to customers for enrollment in June
- Modified EBCE rates per **PG&E rate changes** effective May 1
  - New Joint Rate Comparison available on-line for March 1 rate updates
  - Will wait for July PG&E rate changes before updating comparison again
- **Special Note:** The Joint Rate Mailer is typically required to be mailed by July 1 each year. EBCE is working with PG&E to request an extension due to lack of certainty around rates.

# MARKETING AND OUTREACH



# Marketing

- Issued RFP for Graphic Design and Web Services
  - Due on May 17
  - Sent to all Small, Local and Emerging Business (SLEB) certified “graphic design” vendors in Alameda County
  - Will bring an agreement to the Board meeting in June
- Following up on initial Market Research
  - Will conduct another 300 intercept surveys, plus 50 phone surveys of customers who opted out
- Program Support
  - Worked on web assets for Reach Code and Community Innovation Grant programs

# Outreach

## EVENTS

- April was Earth Month
- May 9<sup>th</sup> was Bike to Work Day
- Continue to attend other community events including local Town Halls and State of the City, farmers' markets, and energy expos

## PROGRAM SUPPORT

- Conducted outreach for participation in Demand Response and Community Innovation Grants programs



## Staff Report Item 8

**TO:** East Bay Community Energy Board of Directors  
**FROM:** JP Ross, Sr. Director of Local Development, Electrification and Innovation  
**SUBJECT:** Battery Demand Response Pilot (Action Item)  
**DATE:** May 15, 2019

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### Recommendation

Receive an update and approve the Battery Demand Response Pilot.

### Background on Demand Response

Demand response programs provide incentives to customers to encourage them to reduce their energy demand during high priced periods. Demand response helps California manage its peak electricity demand, avoids the need for peaking power plants, reduces the cost of energy during certain hours, prevents pollution from peaking power plants, and increases the reliability of the grid. PG&E offers demand response programs to its residential and commercial customers. In addition, the California Independent System Operator (CAISO) allows companies and aggregators to bid load into the market.

The CAISO offers a Demand Response Program<sup>1</sup> for Demand Response Providers and aggregators to bid load into the day-ahead, real time and ancillary services markets. Participation in the ISO market requires significant investment and coordination which may limit participation, requiring a scheduling coordinator and ISO-certified revenue quality meters. Additionally, customers are not allowed to export power from behind the meter energy storage (BTM) when offering energy to the CAISO.

EBCE is in the second year running the PDP-EBCE program for large commercial customers, approved at the April 17, 2019 Board meeting<sup>2</sup> and plans to offer additional Demand Response programs to allow a diverse range of customers ways to participate in our energy market.

### The Proposal

After reviewing the existing demand response programs available to EBCE customers, EBCE staff proposes to offer a demand response program to customers and aggregators operating

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<sup>1</sup> <http://www.caiso.com/participate/Pages/Load/Default.aspx>

<sup>2</sup> <https://ebce.org/wp-content/uploads/Item-10-Demand-Response-Program.pdf>



BTM battery storage systems who can respond to market signals and increase battery discharge rates during high market pricing periods to reduce EBCE procurement obligations.

- **Eligible Participants:** all service points serviced by EBCE with a minimum battery capacity, individually or in aggregate, of 50kWh
- **Duration of the Program:** June 1, 2019 to October 31,2019
- **Compensation for participation:** \$100/MWh of delivered energy
- **Event Day Notification:** EBCE staff will monitor CAISO Real Time pricing to determine when market pricing will peak for EBCE and relay notification via email or phone call to participants 75 minutes prior to an Event start; defining the start hour and duration of the event. EBCE can call up to 45 events during the 2019 summer season.
- **Credit Calculation and Payment:** EBCE will obtain battery discharge logs from participants to develop a baseline charging regime for participating BTM battery systems. Compensation will be based on discharge levels above the baseline during event periods.
- **Customer Notification:** EBCE will issue a solicitation for participation in the program.
- **Program Cap:** 10 participants

### Analysis

According to publicly available data for battery storage incentives available through the Self Generation Incentive Program, there are 219 BTM batteries operating in EBCE territory totaling 3.7MW of battery storage. There are currently an additional 261 projects in development totaling almost 12.8MW of capacity. This is a low estimate of the batteries in operation, as not all systems will be captured in this data set. These distributed batteries are a key resource for EBCE to integrate into its energy management planning to provide both energy, and other services.

### Financial and Other Impacts

There is significant volatility in the California Energy Market. The average energy price since 2017 has been \$42/MWh. However, in 2017 and 2018 there were 272 hours when the energy price was been above \$150/MWh with 108 of those above \$300/MWh. Therefore, there is significant opportunity for EBCE to leverage our increasingly engaged and capable customers in innovative opportunities to mitigate these high prices.

The financial impact to EBCE should be positive. EBCE will be calling events when the Real Time Market is above \$150/MWh and compensating customers \$100/MWh. However, there is some exposure as EBCE is planning to give customers a 75-minute window to respond, and in that time period the Real Time Price may decline. EBCE can manage this exposure as the program operates by modifying when events are called.

As EBCE runs the program evolves we expect financial impacts to improve as automation and market responsiveness would increase.

The 2019 Battery Demand Response Pilot will be closely coordinated with EBCE procurement staff in order to maximize savings to EBCE by lowering costs during high priced periods. The program can generate several benefits:

- **Innovative Programs-** By offering customers this option, EBCE can deliver on our promise to develop innovative programs for our customers to increase energy market fluency and participation by our customers.
- **Demand Response Benefit -** By monitoring the CAISO market costs EBCE will continue to develop Demand Response efforts that can:
  - Lower load during peak hours - which are typically more expensive hours - resulting in potentially lower procurement costs to EBCE;
  - Decrease need for power generation from peaking power plants, which can result in less emissions; and,
  - Increase grid reliability.
- **Direct Experience in Demand Response Programs -** The will continue to generate valuable staff experience in implementing a demand response program. This will facilitate the future roll out of other programs that are more specifically tailored to the needs of Alameda County and EBCE.
  - For example, real time pricing was \$0/MWh or negative for 713 hours over the last 2 years driven by high solar production. There is additional opportunity to encourage customers to consume low cost renewable power with discounted energy prices in following Demand Response programs for charging batteries and EVs. The Demand Response pilot will give EBCE working knowledge of how we can utilize lower cost energy during these hours.

### Conclusion

This proposed program will enable EBCE staff to offer customers and aggregators with BTM battery systems to participate in the energy market and help lower energy procurement costs for EBCE while also creating an additional revenue stream for battery owners.



## Staff Report Item 9

**TO:** East Bay Community Energy Board of Directors

**FROM:** Annie Henderson, VP Marketing and Account Services

**SUBJECT:** EBCE Rate Modifications (Informational Item)

**DATE:** May 15, 2019

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### **Recommendation**

Receive an update from staff regarding EBCE rate modifications

### **Background**

On April 19, 2019, PG&E filed a proposal to change their rates effective May 1, 2019. PG&E increased their generation rates by an estimated average of 2.3% across all rate schedules.

At the September 2018 Board Meeting, the Board gave EBCE staff authority to modify EBCE rates in response to PG&E rate changes to ensure that EBCE continues to offer a 1.5% discount. Therefore, staff updated EBCE rates to reflect this increase and continue to maintain our value proposition of 1.5% discount for Bright Choice, parity for Brilliant 100, and a one cent adder for Renewable 100.

EBCE staff provided an email notice to the Board on April 29, 2019, indicating the intent to make May rate modifications. EBCE back-end systems were updated as of May 13, 2019. Customer bill cycles that begin on or after May 1 will reflect these updated rates. Customer bill cycles that began prior to May 1 will be billed for the entire bill cycle at the previous rates.

EBCE staff communicated this rate adjustment to customers through a message on customer bills indicating that EBCE is continuing to maintain its 1.5% discount relative to PG&E rates, provided talking points for call center representatives, updated EBCE Rate Sheets online, and called a small population of our largest customers to notify them of the changes in PG&E rates and the fact that EBCE is continuing to provide its stated 1.5% discount.

It is anticipated that the final PG&E rate change of 2019 and the update to the Power Charge Indifference Adjustment (PCIA) will be effective on July 1, 2019. EBCE staff will continue to update the board as information is available.

**Fiscal Impact**

Increase in PG&E rates will result in increased EBCE revenues. At the time of drafting this report, a precise number was not available.

**CEQA**

Not a project

**Attachments**



**Staff Report Item 10**

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Annie Henderson, VP Marketing and Account Services  
**SUBJECT:** EBCE Value Proposition Update/Rate Setting Process (Action Item)  
**DATE:** May 15, 2019

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**Recommendation**

Approve a resolution adopting a process for updating the EBCE value proposition and rate setting for fiscal year 2019/2020

**Initial EBCE Rate Setting and PG&E’s 2019 Rate Timeline**

EBCE’s rates are currently set in relation to PG&E generation rates. Below is a summary timeline of how and when the value proposition and rates were established or modified:

<b>Date</b>	<b>Action</b>
February 7, 2018	Board approval for Bright Choice product at 1.5% discount to PG&E generation rate and Brilliant 100 product set at parity with PG&E generation rate
March 21, 2018	Rate sheets approved by Board to establish exact dollar amount per kWh for each rate schedule such as E1, A10 and E19
April 18, 2018	Board approves 100% renewable energy product at a premium to the PG&E generation rate for Phase 2 program launch
May 16, 2018	Board adopts Bright Choice and Brilliant 100 rates for Phase 2 and sets 100% renewable energy product at \$0.01 per kWh over Brilliant 100 rate
June 20, 2018	Board adopts updated rate sheets that include 100% renewable energy product, now called Renewable 100
September 26, 2018	Board approves a rate setting protocol that authorizes staff to modify EBCE rates to maintain the approved value proposition of each product
March 20, 2019	Staff reports to Board on modification of rates to maintain value proposition for each product due to changes in PG&E generation rate.
May 15, 2019	Staff reports to Board on second modification of rates to maintain value proposition for each product due to changes in PG&E generation rate.

The current rates are defined by the following value propositions:

- Bright Choice: 1.5% less than the PG&E generation rate
- Brilliant 100: Same price as PG&E generation rate
- Renewable 100: Additional one cent per kilowatt-hour (kWh) over PG&E generation rate

Typically, PG&E's rates are set for implementation on January 1 each year. However, the 2019 rate setting schedule has been delayed, and PG&E is still operating on slightly modified 2018 rates. At this time, it is anticipated that the final PG&E generation rates and final Power Charge Indifference Adjustment (PCIA) will be effective July 1, 2019.

### **Proposed Process for EBCE to Update Our Value Proposition/Set Rates**

EBCE's Implementation Plan and Statement of Intent ([August 2017](#)) states that "EBCE will review its rates at a minimum once a year. EBCE will employ a robust and highly transparent rate setting process for all rate changes that will include both a public hearing and a written public comment period."

As part of the Rate Setting protocol approved by the Board in September 2018, any change to EBCE's value proposition shall be done with the input of stakeholders and approval by the Board. The following proposal provides a suggested approach to evaluating and implementing changes to EBCE's value propositions.

Staff recommends the following approach to this year's review and approval of EBCE's value proposition and rates.

1. **Executive Committee meeting.** Staff will provide a staff report containing analysis of PG&E rates and preliminary recommendations for changes to EBCE's value proposition, i.e. discount options.
2. **Community workshops.** Based on feedback received at the Executive Committee meeting, staff will revise analysis if needed, and solicit comments from the community. This will be achieved through up to three (3) community meetings in geographically diverse locations (e.g. north, east, and south county). Staff will consolidate feedback from these meetings into a supporting document that will be presented to the Board at their upcoming meeting. Written comments will be accepted in lieu of, or in addition to, verbal comments made during these workshops. A specific email address will be provided to the public to submit comments, along with a clear deadline for submittal.
3. **Community Advisory Committee meeting.** CAC will receive a presentation from staff and discuss the staff recommendation.
4. **Board meeting.** Staff will present analysis, findings, and recommendations derived from feedback from an Executive Committee meeting, Community Workshops and a Community Advisory Committee meeting. The Board will have the opportunity to vote on staff recommendations. If Board requests further analysis, the process will extend to the next Board meeting.

This process allows for robust public input, while not delaying what may be a time-sensitive process. The public will be welcome to participate in all meetings outlined above.

**Proposed Process Timeline**

<b>Date</b>	<b>Item</b>
May 15, 2019	Process Approval by Board of Directors
May 24, 2019	Discount Options presented to Executive Committee for initial feedback
May 28 - June 7, 2019	Up to three (3) public workshops held to review, discuss, and collect feedback on discount options
June 7, 2019	Written comments due from public on discount options
June 14, 2019	Staff proposal included in posted BOD packet
June 17, 2019	Staff presents proposal to CAC
June 19, 2019	BOD reviews and approves staff proposal on discount
July 1, 2019	Anticipated final PG&E Rates and PCIA
July 2, 2019	EBCE begins to update back-end systems per final PG&E Rates, PCIA, and approved discount
July 15, 2019 (estimated)	EBCE launches new rates with July 1 effective date
July 17, 2019	Staff provides update to board on status of new EBCE rates based on value proposition approved in June 2019 and presents rate sheets

**Fiscal Impact**

The proposed process has no direct fiscal impact. However, the fiscal impact of various discount options will be presented at the Executive Committee, public workshops, Community Advisory Committee, and Board meetings.

**Attachments**

None.

**CEQA**

Not a project.

Attachment:

- A. Resolution to Adopt Process for Fiscal Year 2019-2020 Value Proposition and Rate Setting



## Staff Report Item 11

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** Joint CCA Cost-Sharing and Reimbursement Agreement and ACES  
(Action Item)

**DATE:** May 15, 2019

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### Recommendation

Approve a resolution authorizing the CEO to execute an agreement between EBCE and four CCA programs (Peninsula Clean Energy, Silicon Valley Clean Energy, City of San Jose Clean Energy, and Monterey Bay Community Power, collectively the “Joint CCAs”) to share costs of certain consultant services.

### Background

The Joint CCAs negotiated a cost sharing agreement that would allow the parties to share the costs of certain consultant agreements for services benefiting all of the parties. The cost sharing agreement does not itself commit the EBCE to any particular contract or expenditure, but provides a structure for future cost sharing and reimbursement. Joint CCA cost-sharing will be pursued where the Joint CCAs can benefit from the economies of scale of shared procurement and contracting.

The Joint CCAs are already negotiating the first consultant agreement that would be shared under this agreement. That contract will be for Resource Adequacy (RA) compliance services with ACES. The Joint CCAs are subject to the same CPUC requirements with regard to RA and procuring this service jointly will benefit each of the parties. will allow the Joint CCAs to share costs of future contracts as well.

The cost sharing agreement was negotiated and reviewed by all of the Joint CCAs’ respective legal counsel and requires the approval of each of the CCA’s boards. Any subsequent cost-sharing agreements exceeding the CEO’s signing authority will require the approval of the Board.

### Conclusion

The Joint CCA Cost Sharing and Reimbursement Agreement will allow the Joint CCAs to jointly procure services and to obtain services at greater economies of scale and a potentially lower cost.



**Attachments:**

- A. Resolution Authorizing the CEO to execute an agreement between EBCE and four CCA programs; and
- B. Agreement between EBCE and four CCA programs

**RESOLUTION EBCE R-2019-\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING  
A COST SHARING AND REIMBURSEMENT AGREEMENT WITH  
PENINSULA CLEAN ENERGY AUTHORITY, CITY OF SAN JOSE  
CLEAN ENERGY, SILICON VALLEY CLEAN ENERGY AUTHORITY,  
AND MONTEREY BAY COMMUNITY POWER AUTHORITY**

**WHEREAS**, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County as a community choice aggregation agency (“CCA”); and

**WHEREAS**, Peninsula Clean Energy Authority, Silicon Valley Clean Energy Authority, City of San Jose Clean Energy, and Monterey Bay Community Power Authority also operate CCA programs in their respective jurisdictions; and

**WHEREAS**, the EBCE wishes to enter into an agreement with these CCA programs to jointly procure and contract for consulting services in order to obtain services at greater economies of scale and a potentially lower cost for EBCE; and

**WHEREAS**, the Joint CCA Cost Sharing and Reimbursement Agreement provides a framework for cost-sharing between the CCAs in the future.

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

**SECTION 1.** The material terms of the Cost-Sharing and Reimbursement Agreement, attached and incorporated herein, are hereby approved.

**SECTION 2.** The CEO is hereby authorized to execute the Agreement in substantially the form attached, with any non-substantive clarifying or clerical changes proposed by the CEO and approved by General Counsel.

**ADOPTED AND APPROVED this 15 day of May, 2019.**

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Scott Haggerty, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board

**COST-SHARING AND REIMBURSEMENT AGREEMENT BETWEEN**  
**THE PENINSULA CLEAN ENERGY AUTHORITY,**  
**THE SILICON VALLEY CLEAN ENERGY AUTHORITY,**  
**CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY,**  
**THE EAST BAY COMMUNITY ENERGY AUTHORITY,**  
**AND MONTEREY BAY COMMUNITY POWER AUTHORITY**  
**FOR PROFESSIONAL CONSULTANT SERVICES**

This COST-SHARING AND REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into on \_\_\_\_\_, 2019, by and between the Peninsula Clean Energy Authority (“PCE”), the Silicon Valley Clean Energy Authority (“SVCE”), City of San José, Administrator of San José Clean Energy (“SJCE”), the East Bay Community Energy Authority (“EBCE”), and the Monterey Bay Community Power Authority (“MBCP”), for the cost-sharing and reimbursement of costs in connection with the performance of professional services for the (1) due diligence prior to purchase of Resource Adequacy; (2) joint review and purchase of Resource Adequacy; (3) development of specifications for joint data-management services; and (4) additional consultant services as may be desired in the future. In this Agreement, PCE, SVCE, SJCE, EBCE, and MBCP are referred to individually as “Party” and collectively as “the Parties.”

RECITALS

- A. PCE, SVCE, EBCE, and MBCP are joint powers authorities, and SJCE is a department of the City of San José, organized for the purpose of conducting community choice aggregation programs and other energy-related climate change programs.
- B. Staff at PCE, SVCE, SJCE, EBCE, and MBCP have worked and will work together to develop scopes of work for consultant services to be obtained from Request for Proposal (“RFP”) processes and pursuant to written professional services contracts (“Contract” or “Contracts”). The initial scopes of work will require the selected consultants to: (1) conduct due diligence prior to the RFP process(es); (2) jointly review options to purchase electric capacity for Resource Adequacy purposes; (3) provide regulatory compliance-related services for Resource Adequacy; and/or (4) develop specifications for joint data-management services (together, “Services”).
- C. Staff at PCE, SVCE, SJCE, EBCE, and MBCP may work together to develop scopes of work for additional consultant services (“Additional Services”) and desire to establish a master agreement for this purpose.
- D. PCE, SVCE, SJCE, EBCE, and MBCP have agreed to share the costs of the consultants who are selected and whose Services/Additional Services will benefit the Parties as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, PCE, SVCE, SJCE, EBCE, and MBCP mutually agree to the following:

1. Recitals. The Recitals stated above are true and correct and are incorporated by this reference into this Agreement.
2. Addenda and Contracts. Each set of Services and Additional Services secured pursuant to this Agreement shall be described in a scope of work set forth in an addendum to this Agreement (“Addendum” or, pluralized, “Addenda”). Each Addendum must identify, and be signed by, each of the Parties that will be participating in the cost-sharing arrangement for that scope of work (“Participating Parties”), as well as identify the Responsible Party (defined below) and describe the cost-sharing arrangement among the Participating Parties. The Services or Additional Services called for in an Addendum shall be obtained pursuant to a written professional services contract (“Contract”) between the Responsible Party and the selected consultant. Each Contract must include the relevant scope of work, a termination-without-cause provision, and a not-to-exceed dollar amount. With regard to any Contract for which SJCE is the Responsible Party, SJCE, at its sole discretion, will negotiate the inclusion of the following: (1) a provision indicating that obligations under the Contract are special limited obligations of SJCE payable solely from the Designated Fund (defined as the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et seq.*) (“Designated Fund”), and (2) if the term of a Contract is more than one year, a provision indicating that the term of the agreement is subject to appropriation of funds by the City Council of the City of San José, in its sole discretion. Any Addendum or Contract may be amended as mutually agreed by the Participating Parties, including pursuant to Section 5(c)(i) below.
3. Responsible Party and Non-Responsible Parties. The Party administering the RFP process for any Contract will be the “Responsible Party,” and the remaining Participating Parties for that Contract will be the “Non-Responsible Parties.” The “Responsible Party” for each Contract will be determined by unanimous consent of the Participating Parties for that Contract. This determination will be stated in the Addendum for that Contract.
4. Responsibilities of the Parties.
  - a. The Responsible Party for a Contract will do all of the following:
    - i. Prepare the scope of work for the Services and/or Additional Services to be secured pursuant to the Contract.
    - ii. Issue and administer the RFP for the selected consultant.
    - iii. Jointly select with the Non-Responsible Party/Parties the consultant to provide the Services and/or Additional Services described in the RFP.
    - iv. Enter into a Contract with the jointly selected consultant upon the completion of the RFP process for the Contract. The Participating Parties will mutually agree to terms of the Contract; provided, however, that the Contract must contain the provisions enumerated in Section 2 above.

- v. Make timely payments to the selected consultant under the terms of the Contract and administer and manage the Contract.
  - vi. Send timely invoices to the Non-Responsible Party/Parties listing the payments made to the selected consultant pursuant to the Contract.
  - vii. Directly supervise the professional services provided by the selected consultant.
- b. The Non-Responsible Party/Parties for a Contract will do all of the following:
- i. Jointly assist the Responsible Party in reviewing and evaluating the proposals received by the Responsible Party in response to the RFP.
  - ii. Jointly select with the Responsible Party the consultant to perform the Services and/or Additional Services described in the RFP.
  - iii. Mutually agree, with the Responsible Party, to the terms of the Contract; provided, however, that the Contract must contain the provisions enumerated in Section 2 above.
  - iv. Reimburse, on an equal-share basis, the Responsible Party for the payments made by the Responsible Party to the selected consultant pursuant to the Contract. For example, if four Non-Responsible Parties choose to participate in a Contract (five Participating Parties total), each Non-Responsible Party will pay the Responsible Party twenty percent (20%) of the cost of the payments made by the Responsible Party. Each Non-Responsible Party must pay its share within 30 days of receiving each invoice from the Responsible Party.
  - v. Work cooperatively with the Responsible Party in the Responsible Party's (1) administration and management of the Contract and (2) supervision of the professional services provided by the consultant.

5. Term and Termination.

- a. *Term.* The term of this Agreement will commence on the date first written above and, absent earlier termination pursuant to the provisions below, terminate on December 31, 2022. With regard to SJCE only, the funding in any year may be contingent on future appropriation by the City Council of the City of San José, in its sole discretion. If the funding required to pay for any services for the next fiscal year has not been appropriated by June 30 of any year, this Agreement will automatically terminate for SJCE, effective June 30.

- b. *Termination with or without cause.* Any Party may choose to terminate this Agreement in its entirety, or solely with respect to a particular Addendum for which the Party is a Participating Party, with or without cause upon 30 days' written notice. If the termination is for cause (i.e., default by another Party ("Defaulting Party") of a material term of this Agreement), the terminating Party will give the Defaulting Party a reasonable period of time to cure the default, which in no case shall be less than 15 days.
  
- c. *Effect of termination/payments owed.* Termination of this Agreement in its entirety, or of this Agreement with respect to a particular Addendum, obligates the terminating Party or Parties to make any outstanding payments owed to the Responsible Party or Parties as follows:
  - i. In the event a Party gives notice of termination of this Agreement with respect to a particular Addendum, the remaining Participating Parties listed in that Addendum will promptly decide whether to (1) terminate the Addendum and corresponding Contract; (2) amend the Addendum and Contract to reduce the scope of work and the cost; or (3) continue with the Addendum and Contract as originally drafted and scoped, but reallocating the terminating Party's remaining cost responsibility among the remaining Participating Parties. The remaining Participating Parties will make reasonable efforts to terminate or amend the Addendum and corresponding Contract to reduce the scope of work and/or cost; provided, however, that if they are unable to do so, the terminating Party will remain obligated to pay its shared cost obligation pursuant to the original Addendum; and provided further that, with regard to SJCE only, obligations under this Agreement are special limited obligations of SJCE payable solely from the Designated Fund, and shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the City of San José or its Community Energy Department.
  
  - ii. In addition to (i) above, in the event a Non-Responsible Party terminates this Agreement with respect to a particular Addendum, such Non-Responsible Party will reimburse the Responsible Party for the Non-Responsible Party's share of any unpaid consultant fees, incurred prior to the effective date of termination, that the Responsible Party is obligated to pay under the Addendum. The Non-Responsible Party will make such reimbursement within 30 days of the effective date of the termination.
  
  - iii. Sections 5(c)(i) and (ii) apply to the termination of this Agreement with respect to a single Addendum or multiple Addenda.
  
  - iv. If a termination is for cause, any amounts owed under this Section 5(c) and in dispute will be subject to an informal meet and confer between the Participating Parties, to be conducted no later than within 15 days of the effective date of the notice of termination. In the event such informal meet

and confer does not successfully resolve the dispute, the Parties may pursue any remedies available to them under law.

6. Hold Harmless and Indemnification. The indemnification obligations of the Parties shall be as follows:
- a. PCE shall defend, hold harmless and indemnify SVCE, SJCE, EBCE, and MBCP, and their directors, officers, agents and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of PCE, its directors, officers, agents and/or employees.
  - b. SVCE shall defend, save harmless, and indemnify PCE, SJCE, EBCE, and MBCP, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of SVCE, its directors, officers, agents and/or employees.
  - c. SJCE shall defend, save harmless, and indemnify PCE, SVCE, EBCE, and MBCP, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of SJCE, its directors, officers, agents and/or employees.
  - d. EBCE shall defend, save harmless, and indemnify PCE, SVCE, SJCE, and MBCP, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of EBCE, its directors, officers, agents and/or employees.
  - e. MBCP shall defend, save harmless, and indemnify PCE, SVCE, SJCE, and EBCE, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions or other wrongful conduct of MBCP, its directors, officers, agents and/or employees.
  - f. In the event of concurrent negligence of two or more of PCE, SVCE, SJCE, EBCE, and/or MBCP, or of their directors, officers, agents, or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.
  - g. Unless the Participating Parties to a Contract provide otherwise in the Addendum for that Contract, the duty of any Party to defend, save harmless, and indemnify shall extend only to, and in no circumstance exceed, the share of funds owed by that

Party for the specific Contract(s) out of which such duty arises. With regard to SJCE only, such duty to defend, save harmless, and indemnify extends only to, and in no circumstance will exceed, the Designated Fund for SJCE.

- h. These provisions shall survive expiration or termination of this Agreement.
7. Amendment and Waiver. Except for any Addenda added pursuant to Section 2, no change or modification of this Agreement shall be valid unless the same is in writing and signed by all Parties, and no verbal understanding or agreement not incorporated herein shall be binding on any Party hereto.
  8. Governing Law. This Agreement shall be construed and governed by the laws of the State of California, and any suit or action initiated by any Party shall be brought in the Superior Court for the County of San Mateo, California, or the United States District Court for the Northern District of California.
  9. Time of Essence. Time is of the essence for every provision hereof in which time is a factor.
  10. Benefit of Parties. The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors and assigns. No Party shall assign this Agreement or any portion thereof to a third party without the prior written consent of all of the other Parties. Any such assignment without prior written consent by one Party shall give any or all of the other Parties the right to automatically and immediately terminate this Agreement without penalty or advance notice. Such termination shall be effective only as to the terminating Party or Parties.
  11. Entire Agreement of the Parties. Except for any Addenda added pursuant to Section 2, this Agreement supersedes any and all agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement and contains all of the representations, covenants, and agreements between the Parties with respect to the subject matter of this Agreement.
  12. Independent Counsel. Each Party has had the opportunity to consult with its own attorney with respect to this Agreement, and in the event that any language contained herein is construed to be vague or ambiguous, this Agreement shall not be strictly construed against any Party.
  13. Notice. Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to PCE:

Jan Pepper, CEO  
Peninsula Clean Energy  
2075 Woodside Road  
Redwood City, California 94061



[jpepper@peninsulacleanenergy.com](mailto:jpepper@peninsulacleanenergy.com)

If to SVCE:

Girish Balachandran, CEO  
Silicon Valley Clean Energy  
333 W. El Camino Real, Suite 290  
Sunnyvale, CA 94087  
[girish@svcleanenergy.org](mailto:girish@svcleanenergy.org)

If to SJCE:

Lori Mitchell, Director  
cc: Luisa Elkins, Senior Deputy City Attorney  
San Jose Clean Energy  
200 E. Santa Clara St., 14th Floor  
San José, CA 95113  
[Lori.Mitchell@sanjoseca.gov](mailto:Lori.Mitchell@sanjoseca.gov)  
[Luisa.Elkins@sanjoseca.gov](mailto:Luisa.Elkins@sanjoseca.gov)

If to EBCE:

Nick Chaset, CEO  
East Bay Community Energy  
1111 Broadway, 3rd Floor  
Oakland, CA 94607  
[nchaset@ebce.org](mailto:nchaset@ebce.org)

If to MBCP:

Tom Habashi, CEO  
Monterey Bay Community Power Authority  
70 Garden Couty, 3rd Floor  
Monterey, CA 93940  
[thabashi@mbcommunitypower.org](mailto:thabashi@mbcommunitypower.org)

14. Invalid Provision. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
15. Headings and Captions. The headings and captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of the Agreement or any part thereof.
16. Counterparts. This Agreement may be executed in counterpart originals, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement below on the date first written above.

**Peninsula Clean Energy Authority**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Silicon Valley Clean Energy Authority**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**City of San José, Administrator of San José  
Clean Energy**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**East Bay Clean Energy Authority**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Monterey Bay Community Power Authority**

Date: \_\_\_\_\_

By: \_\_\_\_\_



# Legislative Update

Mark Weideman, Weideman Group  
May 15, 2019



# Wildfires & IOU Financial Stability

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- 4/12 Newsom Wildfire Report
- Wildfire Commission
- Wildfire-Related Legislation

# Central Procurement & CPUC Reform Item 12



- Governor's report recommended evaluation of new procurement models for resource adequacy, including a new state procurement entity
- AB 56 (E. Garcia) - Central procurement measure - currently focused on using CAEATFA as the procurement entity
- SB 350 (Hertzberg) - Vehicle being used to discuss resource adequacy procurement in the Senate

# Current EBCE Bill Positions

Item 12

AB 56	E. Garcia	Statewide central electricity procurement entity	Asm appropriations cmte – suspense 5/16	<b>OPPOSE UNLESS AMENDED</b>
AB 868	Bigelow	Requires IOUs that deenergize for wildfire mitigation to consult with those likely affected in developing protocols for when to act, notice, and how to minimize adverse effects	Asm appropriations cmte – suspense 5/16	<b>SUPPORT</b>
AB 1362	O'Donnell	Sets up CPUC to provide information to the public about CCA / ESP / IOU rates and programs.	Asm appropriations cmte 5/15	<b>OPPOSE UNLESS AMENDED</b>
SB 49	Skinner	Energy efficiency, building stds, cost-effectiveness & GHGs	Sen appropriations cmte – suspense 5/16	<b>SUPPORT</b>
SB 167	Dodd	Requires PUC to include impacts on medical baseline customers of IOU wildfire mitigation plans	Assigned to Asm utilities & energy cmte	<b>SUPPORT</b>
SB 255	Bradford	Expands CPUC supplier diversity program to CCAs, ESPs, wholesale electric generators	Sen appropriations cmte – suspense 5/16	<b>SUPPORT</b>
SB 520	Hertzberg	Provides that IOUs are POLR unless provided otherwise in an agreement approved by the CPUC; any POLR provider is subject to CPUC rate regulation	Sen appropriations cmte – suspense 5/16	<b>OPPOSE UNLESS AMENDED</b>