



Staff Report Item 2

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: Temporarily Increase the Signing Authority of the CEO for a Period of 90 Days to Maintain Operations During the COVID-19 Pandemic (Action Item)

DATE: March 18, 2020

Recommendation

Adopt a Resolution to temporarily increase the signing authority of the CEO for a period of 90 days, in order to ensure the continued operations of EBCE during the COVID-19 pandemic.

Background and Discussion

An outbreak of respiratory illness due to a novel coronavirus, now known as COVID-19, was identified in Wuhan City, China in December 2019. Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death. The Centers for Disease Control and Prevention (“CDC”) believes that symptoms appear within two to fourteen days after exposure. Currently, there is no vaccine to prevent COVID-19.

The CDC’s guidance to manage ongoing COVID-19 risk requires extraordinary efforts, including limiting public gatherings. As of March 14, 2020, there are over 2,500 cases in the United States, including 340 cases in California. On March 4, 2020, Governor Gavin Newsom declared a state of emergency to address the COVID-19 outbreak. On March 11, 2020, the World Health Organization publicly characterized COVID-19 as a global pandemic with cases in at least 114 countries. Governor Newsom issued an executive order on March 12, 2020, to further enhance state and local governments’ ability to respond the pandemic. On Friday, March 13, 2019, the President of the United States declared a state of national emergency.

It is currently unknown how long the COVID-19 outbreak will last, or the extent to which it could impact EBCE. The Governor’s executive order provides that all residents are to heed the guidance of state and local public health officials, including but not limited to the imposition of social distancing measures. It also waives for the duration of the emergency certain requirements of the Brown Act, to allow local agencies to hold public meetings by teleconference. At least through the end of March, 2020, state public health officials advise that non-essential gatherings of 250 people or more and small gatherings held in small venues

be cancelled, and that gatherings of higher risk individuals be limited to no more than 10 people. It is unknown whether the State or Alameda County will adopt additional measures to limit or avoid public meetings as part of efforts to contain the spread of COVID-19.

Currently, agreements that are valued over \$100,000 must be brought to the Board for approval prior to execution. It is possible in the coming weeks or months that Board meetings will need to be postponed or cancelled, or that a quorum cannot be reached. In such case, the current limit on the CEO's signing authority could result in impacts to agency operations and services.

To mitigate impacts COVID-19 may have on EBCE operations and service, the proposed resolution would temporarily increase the CEO's signing authority for a period of 90 days, allowing the CEO to execute goods, services, and non-professional services agreements in amounts up to \$500,000 and energy procurement agreements of up to ten years in duration and up to \$50 million.

As under the CEO's current signing authority, expenditures must be consistent with EBCE's approved budget, and agreements must be approved as to form by the general counsel. Following execution, the agreements must be summarized on the EBCE website and made available to the public upon request, as well as reported to the Board at the next regularly scheduled meeting. Finally, the proposed resolution excludes from the delegation of authority any agreement related to the acceptance of allocation for, or the procurement of, nuclear power; approval of a new or amended budget; and the setting of EBCE value proposition and customer rates.

The proposed resolution would expire 90 days after adoption, unless extended by the Board.

Fiscal Impact

The proposed resolution would increase the CEO's signing authority for a period of 90 days in order to ensure continued agency operations during the COVID-19 pandemic, but would not in and of itself have any fiscal impact.

Attachments

- A. Resolution Temporarily Increasing the Signing Authority of the Chief Executive Officer for a Period of 90 Days to Maintain Operations During the COVID-19 Pandemic

RESOLUTION R-2020 - 4

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
TEMPORARILY INCREASING THE SIGNING AUTHORITY
OF THE CHIEF EXECUTIVE OFFICER FOR A PERIOD
OF 90 DAYS TO MAINTAIN OPERATIONS DURING THE
COVID-19 PANDEMIC**

WHEREAS, on August 2, 2017, the Board of Directors of the East Bay Community Energy Authority (“EBCE”) adopted Resolution 2017-9 authorizing the Chief Executive Officer (“CEO”) to execute agreements up to \$100,000, provided that expenditures are consistent with the approved budget; agreements are approved as to form by authorized legal counsel; and agreements are reported at the next Board meeting; and

WHEREAS, on November 20, 2019, the Board of Directors adopted Resolution 2019-31 to approve an amended Administrative Procurement Policy, which, among other things, restates the CEO’s authority to execute agreements up to \$100,000; and

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS, since the federal Centers for Disease Control and Prevention (“CDC”) confirmed the first possible case of community spread of COVID-19 in the United States on February 26, 2020, there has been a significant escalation of United States domestic cases and deaths from COVID-19; and

WHEREAS, on March 4, 2020, Gavin Newsom, Governor of the State of California, proclaimed a state of emergency to exist in California due to the spread of COVID-19; and

WHEREAS, as of March 12, 2020, there were over 1,200 COVID-19 cases identified in the United States, including over 170 cases in California, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20, which among other things directed residents to heed the orders and guidance of state and local public health officials, including the imposition of social distancing measures, in order to control the spread of COVID-19, and suspended certain requirements of the Brown Act in order to allow local bodies to hold public meetings via teleconferencing; and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency due to COVID-19; and

WHEREAS, in the event that the Board of Directors needs to reschedule or cancel meetings as a result of impacts associated with COVID-19, the Board desires to ensure that the CEO has the tools necessary for the continued operations of the agency, including the ability to enter into necessary agreements; and

WHEREAS, the Board of Directors desires to temporarily increase, for a period of 90 days, the signing authority delegated to the CEO under Resolution 2017-9.

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

Section 1. For a period of 90 days, the Board hereby suspends Resolution 2017-9 and authorizes the CEO to execute agreements consistent with the following limitations:

- (a) Agreements for goods, non-professional services, and professional services in amounts up to five hundred thousand dollars (\$500,000);
- (b) Agreements for energy procurement with terms up to 10 years, in amounts up to fifty million dollars (\$50,000,000);
- (c) Expenditures approved by the CEO shall be consistent with EBCE's adopted budget. The CEO may not approve a new budget or amend the existing budget.
- (d) All agreements shall be approved as to form by EBCE legal counsel.
- (e) All agreements shall be summarized on the EBCE website and made available to the public upon request, as well as reported to the Board at the next regularly scheduled meeting of the Executive Committee or Board of Directors.
- (f) The authority provided to the CEO under this Resolution shall not extend to any agreement related to the acceptance of allocation for, or the procurement of, nuclear power.
- (g) This Resolution shall not alter or affect the value proposition and rate change process adopted by the Board on May 15, 2019.

Section 2. For a period of 90 days, the Board hereby authorizes the CEO to suspend the following customer terms and conditions and administrative policies:

- (a) Customer terms and conditions related to 'Failure to Pay'
- (b) Delinquent Accounts and Collections policy

Section 3. While in effect, this Resolution shall supersede anything to the contrary in the EBCE's Administrative Procurement Policy.

Section 4. Unless extended by the Board, this Resolution shall expire and be of no further force or effect 90 days after the date of its adoption, at which point Resolution 2017-9 shall resume to be effective.

ADOPTED AND APPROVED this 18th day of March 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of Board