CAC Item C7
Staff Report Item 14

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer

SUBJECT: **California Community Choice Financing Authority Joint Powers Authority (Action Item)**

DATE: April 21, 2021

Recommendation

Approve a Resolution authorizing the formation of and membership in the California Community Choice Financing Authority Joint Powers Authority (JPA) to issue municipal bonds for prepay transactions.

Background and Discussion

Prepay Overview:
As has been discussed now at Board and Board Committee meetings, an energy prepayment – or 'prepay' – is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity. This prepayment structure has historically been utilized for natural gas procurement and is now being applied towards renewable energy. EBCE and Silicon Valley Clean Energy (SVCE) are currently jointly preparing a prepay transaction. A number of other CCAs are also in the process of initiating a similar structure.

Issuing Entity Overview:
Prepays utilize the municipal bond market and therefore need a bond issuing entity in order to participate. The issuing entity is the final party to the prepay transaction that EBCE and SVCE need to secure to fully prepare to transact. While there are 'issuers for hire' in the California municipal bond market, there are a number of advantages to CCAs to establish a conduit issuance JPA. The primary reasons are control and oversight in the bond issuance process and cost savings. Utilizing an available issuance JPA can cost in excess of $200,000 annually.

California Community Choice Financing Authority Overview:
The Joint Exercise of Powers Act, California Government Code Sections 6500 *et seq*. (the "Act"), permits two or more public agencies to create, by agreement, a joint powers authority for the purpose of jointly exercising any common powers and certain additional powers provided for in the Act, including the power to issue bonds for the purposes specified in the Act. EBCE, along with Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (together, "the CCAs") propose to enter into a Joint Powers Agreement (the "Joint Powers Agreement" or "JPA Agreement") to create the California Community Choice Financing Authority (the "CCCFA") to serve as a conduit financing joint powers authority. The CCCFA's objective will be to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members. By entering in the CCCFA JPA Agreement, EBCE will have the opportunity, but not the obligation, to structure a prepay transaction and issue the bonds through the CCCFA. This will be a project financing based public agency, rather than policy making agency. It is not intended to be a policy-maker nor advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

Membership in the CCCFA will be divided into two tiers: the first tier will consist of Founding Members and the second will consist of Associate Members (as such terms are defined in the Joint Powers Agreement). The Board of Directors of the CCCFA will consist of one representative of each of the Founding Members, which will initially consist of EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy. Each Founding Member shall appoint a Director to represent the Founding Member. The director shall be the Chief Executive Officer ("CEO") or the designee of the CEO. Associate Members may be added to the CCCFA pursuant to the terms of the Joint Powers Agreement, provided that any such Associate Member possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Associate Members will not have representatives on the Board of Directors.

In the preparation of the proposed JPA Agreement, the CEOs and General Counsels decided to propose that the Directors be administrative staff of the members due to the very technical, project financing (as opposed to policy oriented) purpose of this JPA. Also, it was felt that continuity on the Board will be important due to the fact that the project financing agreements will be long-term obligations, and having directors with a long-term knowledge base will be important to inform the Board's decision-making.

Pursuant to the Act, and subject to the limitations in Section 6508.1 of the Act, the Joint Powers Agreement specifies that the debts, liabilities and obligations of the CCCFA, including bonds issued by the CCCFA, will not constitute debt, liabilities or obligations of any member. If a member agency desires to withdraw, it may do so with Board approval as long as (1) a minimum of three Founding Members remain parties to the JPA Agreement, so as not to cause the obligations of the CCCFA to consolidate on any individual member's balance sheet, and (2) the withdrawal shall not result in the dissolution of CCCFA so long as any bonds remain outstanding.

It is important to note that the CCCFA JPA will be the counterparty with the Prepay Supplier in the prepay transaction, and therefore the counterparty to all the underlying agreements. That is, EBCE will sign an agreement with the CCCFA JPA, and the CCCFA JPA will be the entity to sign all the rest of the transaction documents. Under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of EBCE or any representative of EBCE serving on the governing body of EBCE.

Financial Impact

The legal fees associated with the development of the CCCFA JPA amount to a maximum of $60,000; this fee is to be split by the four Founding Members. The only costs imposed by the JPA Agreement on the members are the administrative costs of CCCFA, which do not include any project costs. The annual fees to maintain the JPA will shared among Founding and Associate Members. Administrative costs will be paid in accordance with policy that will be developed by the Founding Members. The costs are not substantial as the staffing of this JPA will be limited with most staffing and operating costs supported by individual members. Additional costs will include retaining an independent auditor, administrative costs, and filing fees.

Attachments

A. Resolution Approving the CCCFA Joint Powers Agreement and Authorizing the CEO to Execute the Agreement P-2018-4 Delinquent Accounts and Collections Policy
B. Presentation

RESOLUTION NO. R-2021-X

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT

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

WHEREAS, 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-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, EBCE, acting pursuant to Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "JPA Law"), may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS, EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy desire to create and establish a joint exercise of powers agency pursuant to the JPA Law, such joint exercise of powers agency to be known as the California Community Choice Financing Authority (the "CCCFA") or by such other name as specified in the JPA Agreement as executed and delivered, for the purpose of establishing an entity to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members; and

WHEREAS, EBCE is a community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code of the State of California (the "Public Utilities Code"), that is a public agency, as such term is defined in the JPA Law, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes.

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

Section 1. The Board of Directors hereby approves the California Community Choice Financing Authority (CCCFA) Joint Powers Agreement and authorizes the Chief Executive Officer or a designee to execute the attached Agreement with any minor, non-substantive modifications to be approved by General Counsel.

Section 2. The formation of the CCCFA pursuant to the JPA Agreement is hereby authorized and approved.

Section 3. The officers, employees and agents of EBCE are hereby authorized and directed, jointly and severally, to execute and deliver any and all documents, agreements and instruments and to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of the JPA Agreement and this Resolution.

Section 4. All actions heretofore taken by the officers, employees and agents of EBCE with respect to the matters set forth above are hereby approved, confirmed and ratified.

ADOPTED AND APPROVED this 21st day of April 2021.

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Dan Kalb, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

EAST BAY COMMUNITY ENERGY

CCCFA JPA Overview

PRESENTED BY: Howard Chang, COO
DATE: April 21, 2021

Energy Prepay Introduction

- An energy prepay transaction - or ‘prepay’ - is a long-term financial transaction available to municipal utilities and tax-exempt entities such as CCAs that enables a meaningful power procurement cost savings opportunity
- EBCE is currently in negotiations on an energy prepay transaction jointly with Silicon Valley Clean Energy (SVCE) with Morgan Stanley, who was selected through an RFP.
- The intent of the prepay transaction is to issue tax exempt bonds off balance sheet to prepay energy. As a public agency, EBCE can reduce its procurement costs by utilizing lower cost tax exempt debt.
- This prepay structure has been used historically for natural gas prepayment and is now being applied to energy.
- A number of other CCAs are also in the process of initiating a similar structure.
- The prepay transaction requires the bonds to be issued through an issuance conduit

Bond Issuance Conduit

- Prepays utilize the municipal bond market and therefore need a bond issuing entity in order to participate.
- While there are ‘issuers for hire’ in the California municipal bond market, there are a number of advantages to CCAs to establish a conduit issuance JPA. The primary reasons are control and oversight in the bond issuance process and cost savings. Utilizing an available issuance JPA can cost in excess of $200,000 annually.
- EBCE, along with Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (together, “the CCAs”) propose to enter into a joint powers agreement (the “Joint Powers Agreement”) to create the California Community Choice Financing Authority (the “CCCFA”) to serve as a conduit financing joint powers authority.
- The CCCFA’s objective will be to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members.
- By entering in the CCCFA JPA Agreement, EBCE will have the opportunity, but not the obligation, to structure a prepay transaction and issue the bonds through the CCCFA.
- This will be a project financing based public agency, rather than policy making agency. It is not intended to be a policy-maker nor advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

JPA Details

- Membership in the CCCFA will be divided into two tiers:
  - Founding Members will hold voting rights
  - Associate Members will join the JPA for the purpose of issuing bonds through the conduit for their respective prepays and will have limited voting rights

- The Board of Directors of the CCCFA will consist of one representative of each of the Founding Members, which will initially consist of EBCE, Central Coast Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

- Associate Members may be added to the CCCFA pursuant to the terms of the Joint Powers Agreement, provided that any such Associate Member is a CCA and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes.

- Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents.
  - We proposed that the directors be administrative staff of the members due to the very technical nature of this JPA which is project financing rather than policy oriented and continuity on the Board is important due to the fact that the project financing agreements will be long-term obligations

Limitations of liability

- Under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of EBCE or any representative of EBCE serving on the governing body of EBCE.

- If a member agency desires to withdraw, it may do so with board approval as long as the founding members retain a minimum of three members, so as not to cause the obligations of the CCCFA to consolidate on any individual members balance sheet.

- The CCCFA JPA will be the counterparty with the Prepay Supplier in the prepay transaction, and therefore the counterparty to all the underlying agreements. That is, EBCE will sign an agreement with the CCCFA JPA, and the CCCFA JPA will be the entity to sign all the rest of the transaction documents.

- The legal fees associated with the development of the CCCFA JPA are $60,000, which is to be split by the four Founding Members.

- The only costs imposed by the JPA Agreement on the members are the pass-through administrative costs of CCCFA, which do not include any project costs. These annual fees to maintain the JPA will shared among Founding and Associate Members. Administrative costs will be paid in accordance with policy that will be developed by the founding members. The costs are not substantial as the staffing of this JPA will be limited with most staffing and operating costs supported by individual members. Additional costs will include retaining an independent auditor, administrative costs, and filing fees.

Appendix

EAST BAY COMMUNITY ENERGY

Prepay Overview

Presentation Provided at Jan 29, 2021 Board Meeting with minor revisions to reflect updated status

EAST BAY COMMUNITY ENERGY

Prepay Overview

Structure:

- Term: Typically 30-year term
- Transacting Parties:
  1. Tax-exempt Load Serving Entity (LSE, also called "Prepay Buyer")
  2. Taxable financial counterparty (bank, called "Prepay Supplier")
- Process:
  1. Prepay Supplier assigned into existing energy supply contract(s) held by LSE
  2. Municipal bonds issued by conduit, amounting to combined notional value of assigned contracts
  3. Prepay Supplier pays the contract price to PPA Seller, immediately transferring all electricity and attributes to LSE
  4. LSE pays the Prepay Supplier at discounted rate, achieving procurement cost savings
- Takeaway: Prepay Supplier is effectively the energy supplier and is prepaid for future energy deliveries. The prepay supplier holds and utilizes capital and provides a discount to the Prepay Buyer that is enabled via the spread between the taxable and tax exempt borrowing costs.

Benefits:

- **Lower energy procurement costs:** Savings over 30-year term estimated to be 8-12% per year on power quantities delivered under prepay, compared to spot market purchases and current contracts; subject to change based on market conditions at the time that the bond is issued.

Risks:

- **Regulatory:** Addressing risks related to compliance with SB350 and Emissions Performance Standard (i.e. receipt of PCC1 RECs, no disruption to deliveries); specific risks and remediations will be addressed when final prepay transaction is brought to the Board for approval in coming months.

EAST BAY COMMUNITY ENERGY

Prepay Overview, Cont.

Further Details on Energy Prepayment Transactions:

- An energy prepayment is a long-term non-recourse financial transaction between a tax-exempt Load Serving Entity (LSE) and a taxable financial counterparty (bank, called "Prepay Supplier") utilizing the municipal bond market.
  - LSE committing total of ~$600MM-$800MM of energy supply contracts (combined contract notional values)
  - LSE utilizes prepay in order to lower customer energy costs
- Municipal utilities (and tax-exempt entities such as CCAs) in the US can prepay for a supply of electricity or natural gas from a taxable entity and fund that prepayment with tax-exempt municipal bonds. The LSE must sell the commodity to their retail end-users residing within their traditional service area.
  - This structure is well known and regularly used for gas and is now being applied towards renewables PPAs
  - Codified in US Tax Law. Since first prepayments of natural gas were done in the early 1990s, the IRS issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327)

Key Elements of a Prepay Transaction

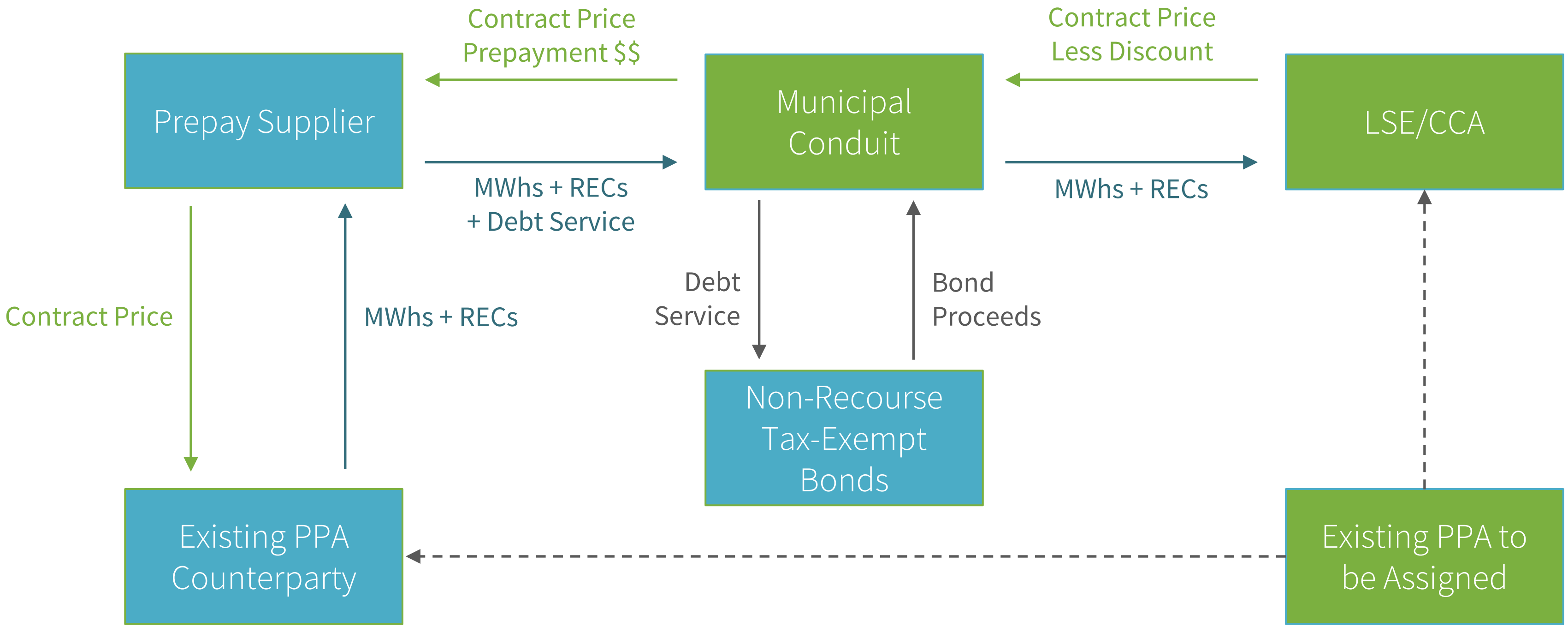
Power Contract Assignment:

- Existing renewable PPAs are assigned to the taxable Prepay Supplier. The LSE continues to ***take and pay*** for energy and attributes delivered through the contract.
- All other terms of the PPA are unchanged.
- If the prepay program terminates early, Prepay Supplier fails to perform, or LSE fails to perform, the LSE forgoes the future savings and the assigned PPA contract is put back to the original LSE.

Debt:

- Non-Recourse: Prepays utilize non-recourse municipal bonds and are ***not*** secured or guaranteed by the referenced entity (i.e. the CCA). Rather the debt is recourse to the Prepay Supplier. This significantly protects the CCA and mitigates risk related to the payment of power contracts novated through the prepay.
- Off Balance Sheet for LSE: Bonds are issued by a municipal bond conduit.

Prepay Structure



EAST BAY COMMUNITY ENERGY

Market Statistics

- Nationwide: 90+ municipal transactions
  - $50+ Billion combined notional contract value
- California: 11 municipal transactions
  - $5.7 Billion combined notional contract value
- Active Suppliers: Goldman Sachs, Morgan Stanley, Royal Bank of Canada, Citi, TD Securities
  - All investment grade rated financial institutions
- Resource Types:
  - Majority of transactions to date have been exclusively for natural gas, remainder including an electricity ‘switch’ at a certain year.
  - The same tax law and similar transaction structure enables the program for electricity from renewables contracts, as well. The market is seeing activity and preparation for these transactions, particularly from CCAs.

EAST BAY COMMUNITY ENERGY

Benefits

- ✓ Savings over the 30-year term expected to be 8% - 12% per year on power quantities delivered under the pre-pay structure compared to spot market purchases / current contracts
- ✓ Favorable risk allocation where EBCE only pays for energy that is delivered (same as contracts today)
- ✓ Debt is non-recourse to EBCE
- ✓ Rating agencies comfortable with comparable deals at SMUD, SCPPA, others

Risks

- Loss of savings and back to square one*
- Lost investment of staff time*
- Loss of spent out-of-pocket costs $25-50k*
  - Consultants all contingent on successful deal
  - Consultants are all paid from deal proceeds vs. EBCE directly

**Note: these risks are only relevant if the transaction <u>does not</u> materialize or dissolves*

- Opportunity cost of higher savings through a prepay transaction initiated at a different time

Timeline

November 2019 through September 2020:

- Got enabled with legal and advisory representation
- Began structuring and document negotiations with Morgan Stanley

Oct. – May 2021:

- Continued document negotiations, preparation
- Identification and prelim assignment discussion of power supply contracts
- Documents ready to execute in coming months

Bond raise and initiation of prepay could occur anytime in next 3-6 months

Factors That May Impact Timing:

- <u>Markets</u>: Taxable vs. tax-exempt spreads need to exist in a meaningful way to achieve discounts we are seeking, and current rate environment is not optimal though market conditions are rapidly improving. Important to get docs in place to be able to transact quickly when markets open back up, though market conditions could delay timeline of deal execution.

- <u>Assignment Consents</u>: Still need to identify commodity transactions for assignment, and timeliness of consents could extend the timeline of deal execution.

EAST BAY COMMUNITY ENERGY

EBCE Prepay Parties

Counsel: Orrick, Herrington & Sutcliffe (Bond & Tax) | Chapman & Cutler LLP (Disclosure & Issuer's)

- Both firms selected through solicitation issued June 2020

Prepay Seller: Morgan Stanley

- Selected through solicitation issued November 2019
- *Note: No legal obligation or liabilities are being entered into currently; approval of counsel allows EBCE to negotiate documents with Morgan Stanley for which staff will later return to the Board for approval of the official prepay transaction and associated bond issuance.*

Joint Prepay Buyer: Silicon Valley Clean Energy

- EBCE and SVCE issued the RFP together, are preparing a joint transaction in which both CCAs assign contracts, share costs and benefits; SVCE is seeking their Board's approval for associated items later this year.

Municipal Financial Advisor: PFM

- Selected through solicitation issued September 2020

Bond Issuer: California Community Choice Financing Authority

- Currently seeking approval for formation among CCAs

EAST BAY COMMUNITY ENERGY