

**12/14/22 EBCE Community Advisory Committee Public Comment**

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<b>Letter #</b>	<b>Name</b>	<b>Organization</b>
1	Jessica Tovar	East Bay Clean Power Alliance
2	Inder Khalsa	EBCE General Counsel

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Adrian Bankhead &lt;abankhead@ebce.org&gt;

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**[Letter to EBCE] Hindrance to Community Engagement with East Bay Community Energy**

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Jessica Tovar <jessica@localcleanenergy.org>  
To: Clerk of the Board <cob@ebce.org>

Mon, Dec 12, 2022 at 11:07 AM

Dear EBCE Clerk,  
Please ensure the EBCE Board of Directors, their Alternates, Community Advisory Committee members and their Alternates receive this important letter concerning the Hindrance to Community Engagement with East Bay Community Energy.

Sincerely,

Jessica Tovar, East Bay Clean Power Alliance

**Jessica Guadalupe Tovar,**

Local Clean Energy Alliance, Energy Democracy Organizer

East Bay Clean Power Alliance, Coordinator

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 **2022-12-12 Hindrance to Community Engagement with EBCE.pdf**  
144K



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December 12, 2022

## Hindrance to Community Engagement with East Bay Community Energy

Dear EBCE Board of Directors,

East Bay Clean Power Alliance (the Alliance) is writing to express concerns regarding cooperation between the foundational representatives that comprise East Bay Community Energy (EBCE); the Board of Directors, Agency Staff, the Community Advisory Committee (CAC) and the Community served. When all partners work together, EBCE customers get the best energy services and the agency flourishes. Behaviors have been observed from some EBCE staff that are contrary to this mutual cooperation including non-neutral behavior in presentation of information and efforts to limit public engagement or disparage constituent groups.

The competence and hard work of EBCE Staff has resulted in four years of reliable energy procurement for the customers in its jurisdiction. In particular, the Alliance would like to recognize the agency's efforts to relieve utility debt during and after the COVID 19 pandemic shutdown. The Alliance also recognizes efforts made by Local Development Business Plan (LDBP) staff who prioritized robust community engagement efforts on proposed and on-going projects.

In a public agency, information is presented by staff in a neutral fashion to the Board, its subcommittees, the CAC, and the public. The information is put out for the various stakeholders to weigh in from their perspectives and put to public discussion. The Board receives this feedback, and makes a decision, which staff implement. Public agency staff should present information on policy options and the potential consequences of those options in a factual and impartial way, and ultimately implement Board decisions. Staff are not supposed to push their own opinions, nor interfere with constituent input or community engagement on policy and program decisions. Public agency staff are certainly not supposed to secure Board support for proposals before the public has even been informed about those proposals.

Since 2019, certain information has been presented by EBCE staff in a misleading and biased way, accompanied by personal attacks by staff in public forums and board meetings against members of the public. This became a significant issue particularly during the discussions regarding the proposal to buy an allocation of nuclear energy from PG&E's Diablo Canyon

power plant. Biased presentation of information makes it difficult for the Board to make a decision based on complete information.

Staff's biased, factually incorrect presentations were targeted to undermine public engagement. During consideration of the nuclear allocation, CEO Chaset put together a rebuttal of a fact sheet the Alliance had put together after consultation with many energy experts. His rebuttal reiterated most of the misinformation he had presented to the Board. At an Albany City Council meeting on the nuclear issue, a member of EBCE staff spoke immediately after the Alliance's organizer. He identified as EBCE staff, and insulted her, using condescending language to discredit the speaker. The information being presented by the Alliance organizer was both factually accurate and a representation of constituent groups and technical experts weighing in during the public engagement process designed for just such input. It is inappropriate for a public agency staff member to undermine public speakers, especially while identifying as staff of EBCE.

A recent Public Records Request revealed a page-long email written by CEO Chaset on June 9, 2022 in direct response to the Alliance's letters and LCEA newsletters opposing the \$15 million gift to UCSF Benioff. The email by CEO Chaset urged the Board to support the \$15 million gift, clearly violating the norm of neutrality for public agency staff. On June 15, 2022, CEO Chaset sent a second email to all Board Members except the CAC representatives, which began by calling out Jessica Tovar by name as requesting meetings with Board Members. Chaset went on to counter what he claimed were "mischaracterizations" by "LCEA" (Local Clean Energy Alliance) in the letter. The Alliance experienced a lack of response to meeting requests from Board Members following that email. Staff should not interfere with the Board members meeting with constituent and stakeholder groups about issues that come before the Board.

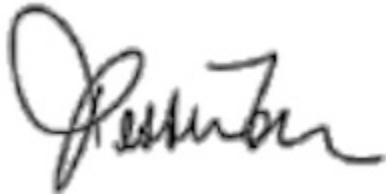
The Public Records Request (PRR) for all documents exchanged between EBCE Board and Staff regarding the proposed \$15 million gift to UCSF Benioff also yielded a significant amount of communication between Staff and Board Members about the proposed \$15 million gift, much of which occurred before the item was even made public. Results also included evidence of staff hostility toward the Alliance and evidence that staff monitor the actions of East Bay Clean Power Alliance and the local chapter of the Sierra Club, (an EBCPA member organization) regarding EBCE proposals.

Community engagement with EBCE has been inhibited in ways that affect community members and organizations other than East Bay Clean Power Alliance. The EBCE Clerk was instructed not to distribute public comments to Board Members as they come in, but to wait until noon on the day of a scheduled Board meeting, virtually eliminating the ability of Board Members to consider community input before decisions are made. However, letters supporting Staff positions, such as those supporting the \$15 million gift to UCSF Benioff, seem to be forwarded to Board Members as they come in. On one occasion, members of the public supporting Staff proposals were given preferential treatment in public speaking opportunities.

Public advocacy by East Bay Clean Power Alliance, community members, and organizations, with the cooperation of elected officials and Alameda County staff, is largely responsible for the existence of EBCE. Since 2015, East Bay Clean Power Alliance has been the most active community-based organization representing BIPOC and other under-represented communities within EBCE territory. Our members include many energy experts. Our allies include some who have worked within the energy sector for decades. Our advocacy is always through the lens of racial and social justice. We expect and have largely received respectful consideration of our efforts from EBCE Staff and from Board Members in the decision-making process.

The Alliance envisioned an East Bay Community Energy agency built around the common goals listed in the JPA Agreement and implemented as a joint project between the Board of Directors, the agency staff and the community served. Hostility to community advocacy should not be acceptable in a public agency and we urge the EBCE Board of Directors to take action to ensure that all entities; Board, Staff, CAC and community can work together for the benefit of the people EBCE serves.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Tovar". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jessica Guadalupe Tovar, East Bay Clean Power Alliance



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## MEMORANDUM

TO: EBCE Board of Directors

CC: Community Advisory Committee (CAC)

FROM: Inder Khalsa, EBCE General Counsel

DATE: December 14, 2022

SUBJECT: Response to Letter from Jessica Tovar dated December 12, 2022

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Chair Lopez asked that I provide a brief response to some of the legal statements or allegations made by Jessica Tovar of East Bay Clean Power Alliance in her letter dated December 12, 2022. I will also make a public statement at tonight's Board meeting.

In the third paragraph of the letter, Ms. Tovar states that "In a public agency, information is presented by staff in a neutral fashion to its Board, its subcommittees, the CAC, and the public." I completely agree that public agency staff should operate with transparency and provide information to the Board, subcommittees, stakeholders, and the public. I do not agree, however, that staff has an obligation to be "neutral." On the contrary, an important role of professional government staff, including the CEO, is to present staff recommendations to the Board of Directors and to explain the reasoning behind staff recommendations. Sometimes, staff may advocate on behalf of their recommendations, and this is perfectly fine. The Board, of course, should take into consideration not only the staff recommendation, but input from committees, stakeholders, and members of the public. The Board is not bound to follow staff recommendation, but there is no obligation on the part of staff to present information in a "neutral" manner, and there is nothing legally problematic about staff advocating passionately on behalf of their views. Democracy functions best when the Board receives many varying points of view, including the views and opinions of staff.

Ms. Tovar goes on to allege that emails from CEO Chaset to the Board regarding the proposed \$15 million gift to UCSF Benioff were somehow inappropriate, echoing allegations that were previously made by Tom Kelly that these communications violated the Brown Act. But unilateral communications from staff members (including the CEO) to the Board of Directors, as well as communications between less than a quorum of the Board or a

Letter #2

subcommittee, are allowed under the Brown Act. In *Roberts v. City of Palmdale*, (1993) 5 Cal.4th 363, the California Supreme Court determined that emails or communications from staff members to the full Board are not a “meeting” as defined by the Brown Act. Likewise, staff can call and speak to individual Directors as long as they don’t convey views from one Director to another in a manner that would create a serial meeting in violation of the Brown Act. Directors can also speak to each other as long as they avoid deliberating or developing a consensus amongst a quorum of a legislative body. In fact, the Brown Act specifically authorizes the formation of “ad hoc subcommittees” of the legislative body, where less than a quorum of the body deliberate regarding a specific issue in confidence and then later report back to the full board.

I have reviewed the records produced by the EBCE and referenced by Ms. Tovar in her letter, and I did not see any evidence that CEO Chaset engaged in any legally inappropriate behavior under the Brown Act or any other law. His emails to the full Board explaining and advocating for staff’s position were exactly the type of unilateral communication allowed under the Brown Act. Further, he did not engage in back and forth communication with more than a quorum of the Board at any time in a manner that would violate the Brown Act. In order to facilitate transparency, the law provides that non-privileged unilateral staff communications to the Board are public records under the PRA. Gov. Code Section 54957.5(a). Therefore, EBCE properly disclosed these emails in response to Mr. Kelly’s request.

Of course, the Board of Directors sets the policy for the agency, and in doing so should take into consideration all information and points of view, including that presented by staff, but also the views and testimony of members of the public, stakeholders, advocates, and experts.