



## Draft Minutes

### Board of Directors Meeting

Wednesday, December 14, 2022

6:00pm

Via Zoom:

<https://us02web.zoom.us/j/87023071843>

Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or 888 475 4499 (Toll Free) or 877 853 5257 (Toll Free)

Webinar ID: 870 2307 1843

*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) 906-0491 or [cob@ebce.org](mailto:cob@ebce.org).*

*If you have anything that you wish to be distributed to the Board of Directors, please email it to the clerk by 5:00 pm the day prior to the meeting.*

**Mayor John Bauters was sworn in as the new EBCE Director for the City of Emeryville.**

**Councilmember Matthew Jorgens was sworn in as the new EBCE Director for the City of Newark.**

#### 1. Welcome & Roll Call

**Present: Directors: Valle (Alameda County), Tiedemann (Albany), Kumagai (Dublin), Bauters (Emeryville), Cox (Fremont), Jorgens (Newark), Kalb (Oakland), Cavanaugh (Piedmont), Narum (Pleasanton), Arriola (Tracy), Patino (Union City), Eldred (Community Advisory Committee) and Chair Lopez (San Leandro)**

**Excused: Directors: Harrison (Berkeley) and Munro (Livermore)**

**Member Cox served as an alternate for Member Mei (Fremont).**

#### 2. Pledge of Allegiance

**Chair Lopez led the EBCE Board of Directors in the Pledge of Allegiance.**

Chair Lopez recognized EBCE Legal Counsel **Inder Khalsa**, who spoke regarding the 12/12/2022 Public Comment letter from Jessica Tovar. Inder Khalsa stated that the Brown Act specifically allows staff to reach out to the Board and provide information, as long as staff is not facilitating an illegal meeting of the Board.

**Inder Khalsa's written statement is attached.**

### 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 two minutes per speaker and must complete an electronic speaker slip. The Board Chair may increase or decrease the time allotted to each speaker.*

**Blair Beekman** spoke regarding Jessica Tovar's Public Comment letter that was discussed at the December 12, 2022 Community Advisory Committee meeting. Blair Beekman stated that, over the long term, EBCE has a responsibility to develop practices that promote democratic accountability and partnership with the communities that it serves.

**Nyah Tisdale** spoke regarding Jessica Tovar's Public Comment letter that was discussed at the December 12, 2022 Community Advisory Committee meeting. Nyah Tisdale stated that, since 2019, EBCE staff have presented information to the Board in a misleading and biased way. Nyah Tisdale stated that biased information makes it difficult for the Board to make decisions based on complete information.

**Jessica Tovar** spoke regarding Jessica Tovar's Public Comment letter that was discussed at the December 12, 2022 Community Advisory Committee meeting. Tovar urged the Board to take action to ensure that all entities can work together for the benefit of communities that EBCE serves.

### 4. Closed Session

Conference with Labor Negotiations pursuant to Government Code 54957.6. (Labor negotiators: Dan Arriola; Corina Lopez) (Unrepresented employee).

### 5. General Report Out of Closed Session

**Chair Lopez stated that there were no items to report out of Closed Session. Chair Lopez further stated that the EBCE Board of Directors will reconvene on Friday, December 16, 2022 at noon to address in open session the item that was discussed in closed session.**

## **CONSENT AGENDA**

### 6. Approval of Minutes from November 16, 2022 and December 2, 2022

### 7. AB 361 - Finding for Continued Remote Meetings

Find that conducting in person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

#### 8. Contracts entered into (Informational Item)

#### 9. Google Cloud Agreement (Action Item)

Resolution authorizing the CEO to negotiate and execute a contract with Google Inc.

**Member Kalb motioned to approve the Consent Agenda. Member Arriola seconded the motion, which passed 12/0.**

**Excused: Members: Harrison (Berkeley), Cox (Fremont) and Munro (Livermore)**

### **REGULAR AGENDA**

#### 10. CEO REPORT

- A. Executive Committee Report
- B. New Staff
- C. Piedmont Pool Electrification Update
- D. Marketing & Account Services Updates

**Blair Beekman** spoke regarding Consent Item 9 - Google Cloud Agreement, stating that cybersecurity plays an important role the development of technologies that provide transparency and accountability. Blair Beekman stated that the ACLU has published guidelines that can help facilitate a conversation between local communities and staff about the relationship between cybersecurity and democracy.

**Jim Lutz** asked about the Board Member Orientation that was mentioned in the CEO Report. Jim Lutz stated that, as a CAC member, he had not received an orientation. Jim Lutz asked if CAC members could receive a similar orientation.

#### 11. Community Advisory Committee Report

- CAC Chair Eldred stated that CAC Vice-Chair Muetzenberg had stepped down from the CAC. Chair Eldred stated that the CAC now lacks a regular representative for the City of Tracy.
- CAC Chair Eldred announced that Member Hernandez has been appointed Vice-Chair of the CAC.
- CAC Chair Eldred spoke regarding Jessica Tovar's Public Comment letter dated December 12, 2022. Chair Eldred stated that what was a concern that the information that staff has provided has been misleading.

#### 12. Net Energy Metering Discussion (Informational Item)

Brief discussion of the new NEM decision and EBCE's positions

##### **The Board discussed:**

1. The NEM 3.0 implementation timeline

2. Has EBCE had conversation with CPUC Directors? Where will they land if they make a decision.
3. How NEM 3.0 will impact Alameda County's solar installation projects

**Blair Beekman** stated that he hoped that the NEM 3.0 decision will not stifle the future growth of local solar implementation in California and that the opposing sides could compromise and create solutions that would provide access to local solar and funding for the electrical grid.

**The Clerk read the written public comment from Barbara Stebbins.** Barbara Stebbins stated that Local Clean Energy Alliance is disappointed that the Board did not oppose the CPUC's proposed NEM 3.0 decision. Barbara Stebbins stated that rooftop solar is the backbone of locally generated energy, and that the proposed decision, if passed by the CPUC, will cause rooftop solar to become financially out of reach for low income customers and community institutions.

**CAC Chair Eldred** spoke about non-bypassable charges on the energy bill, which formed part of the conversation about Net Energy Metering at the December 12, 2022 Community Advisory Committee. Chair Eldred stated that EBCE's ability to mitigate non-bypassable fees for its customers is minimal because EBCE only has control over generation charges; it does not have control over non-bypassable transmission or distribution charges. Additionally, EBCE customers are, in general, not aware of the benefits that EBCE's NEM policies provide. Chair Eldred stated that staff should look for ways to include in its marketing materials the benefits of EBCE's NEM policy and of being a solar customer in EBCE's service territory.

### **13. Amendment to Loan Agreement with BlocPower (Action Item)**

Resolution authorizing CEO to amend the loan agreement with BlocPower to expand eligibility for subsidized financing to general residential market.

**Jim Lutz** offered three suggestions to add to the staff recommendation: 1. Limit the expanded eligibility to market rate to a small fraction of installs; 2. Think about expanding the program to include rental housing in a way that does not displace tenants, and 3. ensure that Health-E Communities Partnership does not take funding or resources away from the Low to Moderate Income Electrification program.

**Member Bauters (Emeryville) motioned to approve the staff recommendation. Member Narum (Pleasanton) seconded the motion, which passed 11/0.**

**Excused: Members: Valle (Alameda County), Bartlett (Berkeley), Marquez (Hayward) and Munro (Livermore)**

### **14. USEPA National Notable Achievement Award (Informational Item)**

Presentation of award for EBCE's first-of-its-kind in the US work to evaluate Brownfield revitalization for the use case of EV fast charging hubs/centers

**Jessie Denver** extended EBCE's appreciation Eric Byous for the opportunity to work with EPA over the last couple of years.

**Zac Thompson** thanked Jessie Denver, Eric Byos and Vanessa Gerber.

**Chair Lopez** expressed her pride in EBCE staff their work leading to the USEPA National Notable Achievement Award.

**CEO Chaset** thanked EPA for the great partnership and looked forward to partnering with EPA to deploy charging at scale for medium and heavy-duty trucking, and to transform brownfield sites into clean fueling stations.

**15. Board Member and Staff Announcements including requests to place items on future Board agendas**

- **CEO Chaset** stated that at the January 18 Board of Directors meeting, a reception will be held to thank departing Board members. CEO Chaset also thanked Chair Lopez for her long service on behalf of EBCE.

**16. Adjournment** to Friday, January 16, 2022 at 6:00 pm.



Inder Khalsa

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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

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.



## Draft Minutes

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12:00pm

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**Vice-Mayor Ben Bartlett was sworn in as the new EBCE Director for the City of Berkeley.**

#### 1. Welcome & Roll Call

Present: Directors: Tiedemann (Albany), Bartlett (Berkeley), Bauters (Emeryville), Cox (Fremont), Marquez (Hayward), Jorgens (Newark), Narum (Pleasanton), Arriola (Tracy), Patino (Union City), Eldred (Community Advisory Committee) and Chair Lopez (San Leandro)

Excused: Directors: Valle (Alameda County), Kumagai (Dublin), Munro (Livermore), Kalb (Oakland), and Cavanaugh (Piedmont).

*Member Cox served as an alternate for Member Mei (Fremont).*

#### 2. Pledge of Allegiance

#### 3. Public Comment

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*to two minutes per speaker and must complete an electronic speaker slip. The Board Chair may increase or decrease the time allotted to each speaker.*

**Blair Beekman** spoke in support of adopting long-term practices that prioritize openness, democracy, and accountability. Blair Beekman spoke in support of listening to voices from local communities who advocate for equitable outcomes.

**4. CEO Contract Amendment (Action Item)**

**Director Bauters motioned to approve the Sixth Amendment to the Employment Agreement Between the East Bay Community Energy Authority and Nicolas Chaset. Director Narum seconded the motion which passed 10/0.**

**Excused: Directors Valle (Alameda County), Kumagai (Dublin), Munro (Livermore), Kalb (Oakland), and Cavanaugh (Piedmont).**

**There was no public comment for this item.**

**5. Board Member and Staff Announcements including requests to place items on future Board agendas**

**Chair Lopez thanked the Board at her last meeting. Members Marquez, Bauters and Bartlett thanked Chair Lopez for her leadership.**

**6. Adjournment to Wednesday, January 18, 2022 at 6:00 pm.**