

EBCE Board of Directors Public Comment received for 6/21/23 Meeting

Letter #	Name	Date
1	Tom Kelly	6/1/2023
2	Jim Lutz	6/8/2023
3	Jessica Tovar	6/19/2023
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Board of Directors and Community Advisory Committee
East Bay Community Energy

Re: EBCE Management Missteps that have Cost Ratepayers Millions

Dear Members of the EBCE Board of Directors and Community Advisory Committee,

Over the past few years, I have consistently advocated for an improvement in the power content of EBCE's default product *Bright Choice*. For many of us, clean, carbon free electricity was the primary reason for pressing for the development of a local community choice program. Evidence of those efforts can be found in EBCE's formation documents which clearly and repeatedly state that EBCE will do better than PG&E on greenhouse gas emissions. In fact, the enabling legislation signed by the City of Stockton states that by joining EBCE, Stockton will reduce its greenhouse gas emissions from electricity. The Joint Powers Agreement signed by Stockton states that EBCE will provide electricity with a lower greenhouse gas intensity than PG&E. Based on EBCE's plan for making *Bright Choice* carbon free by 2030, neither the promises made by Stockton to its constituents, nor by EBCE to its member jurisdictions, are true.

As an advocate, I try to understand the reasons why my efforts do not always succeed. Am I wrong? Is my reasoning faulty? Is there something I am missing? Until recently, I thought that the drive by EBCE to maximize its reserves, and in doing so, improve its credit rating could be the underlying reason why EBCE kept purchasing carbon intensive electricity. But, today, I am wondering if the real reason is simply that EBCE management lacks the experience and qualifications to adequately manage what will soon become a billion-dollar corporation.

Over the past year or so, we have seen a number of very costly actions by EBCE management that have affected the reputation of the agency and deprived ratepayers of cleaner, cheaper electricity and enhanced local programs. I estimate those financial losses to ratepayers at more than \$20M. The cost of the loss of credibility and confidence in EBCE management cannot be adequately calculated. Those costly actions include:

A. The repeated failure of EBCE to meet its Resource Adequacy obligations.

The CPUC has assessed EBCE \$6.3M in penalties since February 2019 for its failure to meet its RA obligations. Surprisingly, EBCE management seems to think that it

was simply “gaming” the system by paying the fines rather than acquiring the RA. CEO Nick Chaset made a comment to that effect at the 5/15/23 Community Advisory Committee meeting¹, namely “EBCE customers were better off” by paying the penalties rather than acquiring the RA. Mr. Chaset claimed that EBCE was “unable” to acquire RA during the periods covered by the penalties (4 years), in spite of the fact that other CCAs were able to do so (with the exception of Central Coast Community Energy). Marie Fontenot, EBCE’s Vice President, Power Resources, responded to a letter from the Sierra Club that raised its concerns about the RA issue. She writes:

*EBCE wishes to clarify for Sierra Club of San Francisco Bay that RA penalties were **in lieu of** procurement of RA and therefore the costs of the penalties were equal to or less than the price EBCE would have paid for RA, and as a result the payment of penalties did not have the effect of raising EBCE’s procurement costs, nor did they have a negative impact on customer rates and funding for EBCE’s customer programs.*

What Mr. Chaset and Ms. Fontenot fail to mention is that EBCE’s inability to meet its RA obligations led to at least a one-year delay in the enrollment of Stockton electricity customers in EBCE. That failure has the following financial consequences:

- 1) A loss to EBCE in 2024 of \$17.8M in anticipated net revenues.²
- 2) An additional cost to Stockton ratepayers of approximately \$1.5M³ who must remain with PG&E for at least a year longer.
- 3) In 2022, EBCE issued an RFO for “ZERO-EMISSION MEDIUM AND HEAVY-DUTY GOODS MOVEMENT PROJECT LOANS” from providers in eligible jurisdictions within Alameda County and the cities of Tracy and Stockton.⁴ It may no longer be the case that any contracts that serve the City and Port of Stockton are valid. EBCE ratepayers should not be shouldering costs associated with those contracts.

¹ 5/15/23 CAC meeting video at 1 hour 35 minutes 20 seconds. See, <https://ebce.org/meetings/community-advisory-committee-meeting-5-15-23/>

² https://res.cloudinary.com/diactiwk7/image/upload/v1663374090/11. Item 11 - Inclusion of New Communities - Stockton_kic4j9.pdf (page 7)

³ Letter to City of Stockton – May 12, 2022

⁴ https://res.cloudinary.com/diactiwk7/image/upload/v1664499492/REVISED_9.27.22 - RFO for ZERO-EMISSION MEDIUM AND HEAVY-DUTY GOODS MOVEMENT PROJECT LOANS 9.12 - Copy_kfqviw.pdf

It is also the case that these managerial missteps have had a negative impact on EBCE's standing within the CCA community and among its customers which EBCE spends significant amount of marketing dollars on enhancing.

B. EBCE's purchase of office building – July 9, 2021 - \$8.5M

As we now know, the cost of upgrading the purchased building increased from the Board approved amount of \$7M to \$14M. It appears that EBCE has spent approximately \$770,000 on upgrades to the building. Staff have now received approval from the Board to lease office space. The future of the building is unknown, however, in the current commercial real estate market, the sale price of the building may not be enough to cover EBCE's costs.

C. Proposal to "gift" UCSF's Benioff Children's Hospital \$15M

Fortunately, the widespread community opposition to the CEO Chaset's questionable proposal to gift \$15M in ratepayer funds to Oakland's Children's Hospital was successful. And it now looks as if those funds will be re-directed to a program that is consistent with EBCE's mission. Nevertheless, significant staff time, Board involvement, and community organizing to question the gift was expended. This represents not only a financial cost, but yet another situation that calls into the question the ability of the current management staff to operate the agency successfully, cost effectively, and without serious risks to the agency's reputation, stability and future.

It is time for the EBCE Board to take a very close look at EBCE's management team and take whatever actions are needed to prevent the type of actions taken by the current management that have cost ratepayers millions of dollars and undermined the reputation of the agency.

Sincerely,

Tom Kelly
Berkeley

cc: Jessica Tovar

Adrian Bankhead <abankhead@ebce.org>

2023-2024 Value Proposition

'Jim Lutz' via Clerk of the Board <COB@ebce.org>

Thu, Jun 8, 2023 at 11:11 PM

Reply-To: Jim Lutz <jlutz@lmi.net>To: Clerk of the Board <COB@ebce.org>, info@ebce.org

Dear EBCE Board,

I am submitting this comment in response to the EBCE 2023-2024 Proposed Value Proposition Webinar I attended on June 6. The rate changes proposed by staff were to increase the Bright Choice discount relative to PG&E rates from 3% to 5% and to reduce the Renewable 100 premium relative to PG&E rates from ¾% to ¼%.

Since EBCE began, its rates have always been established relative to PG&E's rates for comparable products. While this may have been appropriate for a newly established community energy agency, it is no longer necessary. I believe this practice is now leading EBCE to charge its customers more than it should.

A more fiscally responsible method of setting rates would be to estimate operating costs, including appropriate market volatility risks and maintaining prudent reserves, and then divide those costs across the total projected energy sales, while preserving the current incremental rate differences between the various EBCE products (Bright Choice and Renewable 100) and rate classes.

EBCE states that, as a Renewable 100 customer, I'm paying only ¾ percent more per kWh today than I would be paying if I were a PG&E customer. While I believe this to be true, there is no way I can confirm it by examining my own PG&E bill.

To get a rough estimate of the reasonableness of EBCE electric generation charges, I compared my November 2022 PG&E bill with the November bill of a friend of mine who lives in Alameda. My EBCE generation-only charges divided by my kWh usage for the month was 13.81 cents per kWh. The energy charges from the Alameda Municipal Power (AMP) bill for the same month was 11.72 cents per kWh. For basically the same rate class, EBCE generation charges were 17.8% higher than AMP energy charges. While I do not know what EBCE is paying to procure electricity, to me this dramatic difference in generation charges suggests significant opportunities for potential rate reductions for EBCE customers if our rates were calculated independently and not tied to PG&E's.

I'm asking the Board to consider directing staff to evaluate other ways of setting rates for customers, given EBCE's successful operations so far.

Sincerely, your loyal customer,

Jim Lutz

PS: I am a member of the Community Advisory Committee, but I am submitting this comment on behalf of myself.

PPS: My original email to PublicComment@ebce.org was returned by google mail with a message the group I was trying to contact (publiccomment) may not exist or I didn't have permission to post messages to the group.



Jessica Guadalupe Tovar
339 15th St #208 Oakland, CA 94612
415-766-7766

Subject: Increase Community Based Energy Resilience budget

June 19, 2023

Call on East Bay Community Energy (EBCE) to resource Community-Based Energy Resilience

We, the undersigned community-based organizations, members and supporters of the East Bay Clean Power Alliance, call for the Board of Directors of East Bay Community Energy (EBCE) to increase funding at least five-fold in the 2023-2024 budget for *Community Resilience*. This funding is needed to begin planning and implementing community-based microgrids at community-trusted resilience hubs.

While we support the 2022-initiated *Resilient Critical Municipal Facilities* project and its continued funding in 2023-2024, many “critical municipal facilities,” such as police and fire stations are not community-based nor community-trusted spaces. As such those facilities do not make appropriate resilience hubs for low-income, people of color, immigrant, disabled, or senior community members during, or in the aftermath of disasters and power shut-offs.

Meanwhile, the need for access to emergency energy services during climate-related and other crises, particularly in communities long neglected due to systemic injustice, has increased dramatically, and can be expected to become more urgent as accelerating climate chaos brings wildfires, smoke, hurricane-force storms, life-threatening heat, and utility power shutoffs (PSPS).

EBCE customers in our communities already suffer from high energy burden due to soaring, out of reach energy bills. Other energy inequities include poor quality housing with inadequate insulation, electrical panels, wiring, etc. Power shut-offs planned, or unplanned, aggravate already stretched household budgets and disproportionately high energy burdens with lost food, jobs and other complications.

We are calling for EBCE to do more to address these serious inequities in energy access, which mostly affect Black, Indigenous, people of color and immigrants. The EBCE microgrid project for municipal agencies should be adapted to include community-accessible and community-trusted places. We applaud the decision to begin including schools, but would like to see community

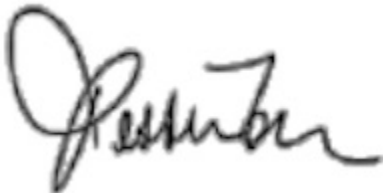
centers, shelters, senior centers, places of worship and other community identified locations be included. Ultimately, community-based microgrids could help reduce energy bills, provide energy resilience, and benefit local distribution and even transmission grids. California leads the nation in having the most schools with solar panels installed and that adding battery storage would make them the best candidates for community resilience centers.

In the five years that EBCE has operated, the overwhelming majority of the Local Development budget has been delegated to projects that benefit middle and affluent customers and businesses. For example, incentive programs for expensive items such as heat pump water heaters and induction ranges only work for those with disposable incomes. EV Charging stations do little to help low-income communities and could create more harm by accelerating rising rents and other costs in our communities.

Our organizations supported efforts by the East Bay Clean Power Alliance starting in 2014 to establish East Bay Community Energy. We worked to ensure that social justice and energy equity were stated goals of the program. We stood with the effort to create a Local Development Business Plan that would bring economic and environmental opportunities to communities long neglected by local governments.

We urge the EBCE Board of Directors to honor these central goals by voting for a five-fold increase in (\$10M vs \$2M or \$4M) the *Community Resilience* budget for resourcing microgrids for Community Based Organizations.

Clean Power to the People,



Jessica Guadalupe Tovar

**East Bay Clean Power Alliance
SolidarityINFOService
Northern California Solar Association
Sunflower Alliance
Californians for Energy Choice
Reclaim Our Power: Utility Justice Campaign
Sustainable Food Network LLC
West Oakland Environmental Indicators Project (WOEIP)
San Francisco Bay Physicians for Social Responsibility
Sierra Club**



Adrian Bankhead <abankhead@ebce.org>

Need for public workshop on \$15M Health E Homes program

Jessica Tovar <jessica@localcleanenergy.org>

Mon, Jun 19, 2023 at 2:14 PM

To: Adrian Bankhead <abankhead@ebce.org>, Clerk of the Board <cob@ebce.org>

Dear EBCE Board of Directors, Community Advisory Committee and Alternates, I am following up on concerns regarding the Health-E Communities \$15M embedded in the budget item.

The item is in the [budget](#) to approve the first \$5M out of the \$15M from the June 2022 budget in the program. According to what CEO Nick Chaset shared with the board, the \$250,000 was secured from an [unnamed foundation](#) to fund an [undisclosed electrification health and air study](#) in conjunction with [undisclosed partners](#). The EBCE \$5M was said to start the delivery and installation of induction cooktops, while we applaud the board for redirecting the funds towards EBCE's energy commitments, we are concerned that the details of this effort are still unclear to the public, including our community health professionals. As a result, I recommend the EBCE board instruct staff to clearly outline the details of this study, partners and exactly what the funds will cover, so that the public can effectively weigh in.

The \$15M dollars initially arranged with UCSF Benioff was a contentious legal issue as the arrangement was made without a full public and transparent process and sought to give away an unprecedented amount of public funds. It would be necessary for the use of these funds to be shared in detail with the public, the Community Advisory Committee and the Board of Directors so that we can effectively weigh in on the issue. In [November 16, 2022 the EBCE board of directors voted on an item that required a full transparent follow up to how the \\$15M would be used](#). We would appreciate the follow through on the transparency.

I am linking the original letter sent by the [East Bay Clean Power Alliance on June 7](#) and again [June 15 with signatory organizations](#). Original letter from the [Law offices of Chatten-Brown, Carstens & Minter](#) Sept 29, 2022.

Thank you,
Jessica Tovar

[Jessica Guadalupe Tovar](#),

[Local Clean Energy Alliance](#), [Energy Democracy Organizer](#)

[East Bay Clean Power Alliance](#), [Coordinator](#)

[339 15th Street Suite 208 Oakland CA, 94612](#)

jessica@localcleanenergy.org [415-766-7766](tel:415-766-7766)

[Support my work with a donation](#)

[Community Choice](#), [Community Power video](#), [Community vision for Solutions video](#), [EBCE fund asthma prevention now!](#)

Letter #4



East Bay Clean Power Alliance
Jessica Tovar
339 15th Street #208 Oakland, CA 94612
jessica@localcleanenergy.org **415-766-7766**

Subject: UPDATED w/ Signatories-Reject \$15M UCSF Benioff Children's Hospital donation – We Demand EBCE Fund Asthma Prevention by Investing in a just transition for Environmental Justice Communities

June 15, 2022

Dear EBCE Board of Directors,

East Bay Clean Power Alliance writes today to urge you to reject the budget proposal by the EBCE Staff to donate \$15 million of EBCE electricity customers' funds to the UCSF Benioff Children's Hospital to create an endowed professorship and undefined asthma program. Instead EBCE should invest that amount of money in Local Development Business Plan programs that advance equitable access to local clean energy for EBCE's customers, directly reducing root causes and triggers of asthma. Local pollution from industrial sources¹ and in-home² are directly linked to childhood triggers and adult onset asthma in environmental justice communities.

The proposal to donate \$15 million of EBCE's net from 2021-2022, was only made available for public comment the Monday before the May 18, 2022 Board of Directors meeting. This hardly meets the "completely transparent³" process advertised on the EBCE agency's website. The proposed donation is shockingly misdirected in terms of EBCE's purpose as stated in the Joint Powers Agreement⁴, and dwarfs all prior community support donations.

1

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3266016/#:~:text=Exposure%20to%20indoor%20air%20pollutants,respiratory%20disorders%20such%20as%20asthma.>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7503605/> ;
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8180519/>

³ <https://ebce.org/about/>
Processes and decisions are completely transparent..."

⁴https://res.cloudinary.com/diactiwk7/image/upload/fl_sanitiz_e,q_auto/east-bay-community-energy-implementation-plan-1.pdf

The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party and any other powers granted to the Authority under state law to participate as a group in the CCA Program pursuant to Public Utilities Code Section 366.2(c)(12); to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs; and, to exercise all other powers necessary and incidental to accomplishing this purpose.

\$15M to an already well-funded UCSF Benioff Children’s Hospital⁵ in Oakland to create the, “East Bay Community Energy Asthma Program,” might sound good but it flies in the face of community calls for 40% investments in equity programs and projects^{6,7} that would address root causes of asthma and prevention of triggers. Such projects like microgrids - islandable solar + storage or building decarbonization & electrification retrofits that reduce or eliminate methane gas exposure. The California Environmental Justice Alliance (CEJA), *Building a Just Energy Future*⁸, and EBCE’s own *Local Development Business Plan*⁹ are two key roadmaps for East Bay Community Energy to jumpstart a just transition for clean energy jobs and a building healthy communities.

The grant amount of \$15 million could be better used to increase equitable access to programs that directly reduce pollution from fossil fuel sources that have disproportionately plagued Black, Indigenous and People of Color (BIPOC) communities in the Bay Area. Current programs such as EBCE’s Low to Moderate Building Electrification & Energy Efficiency program, could apply those funds to further support the elimination of gas-burning appliances and energy efficiency measures in homes of renters and very low income community members that are not currently represented within EBCE’s LMI program approved in early 2022.

According to EBCE’s calculation of building electrification retrofit costs, \$15 million is enough to completely cover the cost for approximately 395 homes/buildings. \$15M could also subsidize the solar and storage infrastructure for 60 community-owned resilience hubs that local community groups have been advocating for. Likewise, increasing funding in EBCE programs that promote the use of electrical medium and heavy duty vehicles could significantly reduce the high asthma rates in heavily burdened communities such as West Oakland.

EBCE has demonstrated its expertise in serving our communities with cleaner energy and is uniquely positioned to directly reduce the incidence of asthma within its jurisdiction by reducing fossil fuel pollution. The agency has no such expertise in biomedical research into the causes, medical prevention and treatment of asthma. This donation seems a misdirected, vanity-driven measure merely to put EBCE’s

⁵ UCSF Benioff Children’s Hospital owned \$2.3B in assets in 2019 and received \$569M from generous donors in 2021.

⁶[A Role for East Bay Community Energy in Advancing Equity for Environmental Justice](#)

⁷[Resolution Urging 40% Equity investments in East Bay Community Energy Programs and Policies](#)

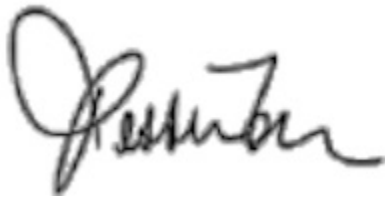
⁸[Building a Just Energy Future; A framework for community choice aggregators to power equity and democracy in California](#)

⁹[EBCE's Local Development Business Plan](#)

name on an important, local institution that is already financially well-endowed compared to frontline-environmental justice communities throughout Alameda County, Tracy and Stockton who do not have access to such resources. East Bay Clean Power Alliance urges the Board to reject this costly proposal and instead refocus our funds and investments back to EBCE's original goals and local development commitment by making direct investments that address root causes and repair the harms of environmental racism within the EBCE territory of which it serves.

As board member Sophie Hahn said, "... Our money should be used for purposes more directly related to our mission, but also, how about for things that don't have these sources of funds..." like helping people within EBCE territory transition off gas to electrification.

Sincerely,

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

Jessica Tovar, East Bay Clean Power Alliance

Signatory organizations:

California Nurses Association (CNA)

California Environmental Justice Alliance (CEJA-Statewide Environmental Justice)

Asian Pacific Environmental Network (APEN)

Communities for a Better Environment (CBE)

Building Energy Equity and Power Coalition (BEEP-Statewide Environmental Justice)

California Alliance for Community Energy (Statewide)

Californians for Energy Choice (Statewide)

SF Bay Physicians for Social Responsibility

Green the Church

SolidarityINFOService

People Organizing to Demand Environmental & Economic Rights (PODER)

Codepink SF Bay Area

Green Party of Alameda County

Women's Earth Matters

Friends of the Public Bank East Bay



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September 29, 2022

Via Email (cob@ebce.org)

East Bay Community Energy
Executive Committee
Board of Directors
Community Advisory Committee
1999 Harrison Street, Suite 800
Oakland, CA 94612

Re: East Bay Community Energy Budget Fiscal Year 2022-2023; \$15 Million
Donation of Ratepayer Funds

Dear Executive Committee Members, Board of Directors, and Community Advisory Committee Members,

On behalf of the Local Clean Energy Alliance (LCEA) and Sierra Club, we urge East Bay Community Energy (EBCE) to reject the proposal to give a \$15 million gift to UCSF Benioff Children’s Hospital as the use of funds in this manner would be contrary to the purpose of EBCE and would be a gift of public funds by a public agency in violation of the California Constitution. Assembly Bill 117 defines an “aggregator” as one of those entities that provides power supply services, including combining the loads of multiple end-use customers and facilitating the sale and purchase of electrical energy, transmission, and other services on behalf of the end-use customers¹.

East Bay Community Energy is a Community Choice Aggregator (CCA) formed as a joint powers agency pursuant to Public Utilities Code section 331.1. The Public Utilities Code established the following purposes for CCAs: “a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts.”²

The EBCE proposal related to UCSF Benioff Children’s Hospitals is described in the June 15, 2022 EBCE Board of Supervisors Staff Report for Item 14 as follows:

¹ Assembly Bill No. 117, available at http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0101-0150/ab_117_bill_20020924_chaptered.pdf.

² Pub. Util. Code, § 366.2.

*The East Bay Community Energy Asthma Program
With \$15 million provided over 3 to 5 years, UCSF Benioff Children's Hospital Oakland
would establish the East Bay Community Energy Asthma Program and the East Bay
Community Energy Distinguished Professorship in Asthma. The program's goal: to
vastly improve access to high-quality asthma care and prevention for underserved
communities in the East Bay Area.³*

While improving access to health care and prevention of asthma is a laudable goal, it is not a goal that serves the limited purposes of EBCE as a community choice energy aggregator. The expenditure of \$15 million on a gift for such purposes would actually be contrary to EBCE's primary purpose. It would divert ratepayer funds from investments in equitable energy programs and projects that are within the limited purpose of EBCE *and* that would also have an effect on reducing and preventing asthma in environmental justice communities by addressing the root causes of air pollution. Many of those programs referred to in the Local Development Business Plan⁴ would have a direct impact on reducing carbon dioxide emissions which are important triggers of asthma⁵. These projects include demand response, energy efficiency, microgrids, "islandable" solar technology that will not go down during a power outage, renewable energy storage, building decarbonization, and electrification retrofits that reduce or eliminate methane gas exposure. The \$15 million gift to UCSF would therefore be a prohibited gift of public funds and it would be a legal error for EBCE to give the funds and for UCSF to accept the funds.

California's Constitution specifically prohibits "gifts" of public resources, often referred to as the ban on "gifts of public funds."⁶ This ban applies to all public agencies including EBCE as a community choice aggregator (CCA) formed pursuant to the Public Utilities Code.⁷

³ Page 78 of 122 of Agenda Packet for June 15, 2022 EBCE Board of Directors Meeting, available at: https://res.cloudinary.com/diactiwk7/image/upload/v1654885486/Agenda_Packet_-_EBCE_BOD_061522_dqj5pc.pdf.

⁴ Local Development Business Plan, available at: https://res.cloudinary.com/diactiwk7/image/upload/local-development-business-plan_final_7-12-18_hi-res.pdf.

⁵ Dosanjh A. Childhood asthma and anthropogenic CO(2) emissions. *J Asthma Allergy*. 2011;4:103-5. doi: 10.2147/JAA.S24565. Epub 2011 Oct 10. PMID: 22034574; PMCID: PMC3196488.

⁶ See Cal. Const. art. XVI, § 6: "The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever . . ."

⁷ Cal. Const. art. XVI, § 6 "applies to all other governmental entities." *Golden Gate Bridge Etc. Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 207 (*Golden Gate Bridge*), citing *County of Los Angeles v. Riley* (1936) 6 Cal.2d 625, 627.

Although the California Constitution directly prohibits gifts of public funds, an exception for public purposes exists.⁸ However, to demonstrate public purpose, the gift must both further the purpose of the donor entity—EBCE—and of the general interest of the people within that entity—the EBCE ratepayers.⁹ As a special, limited purpose entity with its purpose and powers limited by statute and its joint power agreement, EBCE cannot demonstrate a public purpose for the proposed gift to UCSF and thus the gift would be prohibited by law.

Special or limited purpose entities, including joint powers authorities such as EBCE, do not have broad public purposes in the way that other entities such as cities and counties do; CCAs cannot undertake many kinds of activities in furtherance of the general welfare of their citizens. Therefore, as a limited purpose agency, EBCE “can have no interest other than furtherance in some way of the purpose for which it was created.”¹⁰ Any gifts by EBCE would violate the California Constitution unless the expenditure falls within the specifically enumerated powers and purposes of that particular type of district—in this case, as defined by the Public Utilities Code and Joint Powers Authority.

EBCE cannot show that the gift was made in furtherance of the purpose for which the agency was created or, in other words, that it “would use the funds for purposes for which [the agency] itself could have used them.”¹¹ EBCE’s purpose is limited to activities relating to securing energy supply, reducing GHG emissions, promoting rate price stability, and fostering local economic benefits relating to energy and power development.¹² EBCE does not appear to have any purpose authorized by the Public Utilities Code or in its joint powers agreement to provide for medical care or to conduct any medical research. EBCE certainly could not provide medical care or conduct medical research on its own behalf.

While we are extremely supportive of the need to support underserved communities from the harms associated with air pollution and other environmental burdens that these communities disproportionately bear, we believe the best, most direct way for EBCE to achieve this outcome is to apply ratepayer funds towards clean energy programs and projects, as it is charged to do. Not only would the gift fail to further EBCE’s purpose, it would actually be contrary to its purpose as an energy services supplier. The gift would be prohibited by law and thus EBCE and UCSF should cease expending resources on pursuing an agreement for such a prohibited gift of public funds.

⁸ *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 103, citing *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 583; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745, app. dism. *sub nom. County of Alameda v. California Welfare Rights Organization* (1972) 406 U.S. 913.

⁹ *Golden Gate Bridge, supra*, 4 Cal.App.3d 204, 209.

¹⁰ *Id.* at p. 210.

¹¹ *Golden Gate Bridge, supra*, 4 Cal.App.3d 204, 208.

¹² EBCE Joint Powers Agreement, p. 1.

Public Comment recieved for the June 21, 2023 EBCE Board of Directors Meeting
East Bay Community Energy Executive Committee
September 29, 2022
Page 4

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Sunjana Supekar". The signature is written in a cursive, flowing style.

Douglas Carstens
Sunjana Supekar
Chatten-Brown, Carstens & Minter