



Board of Directors Meeting

Wednesday, July 19, 2023
6:00 pm

In Person

The Lake Merritt Room
Cal State East Bay - the Oakland Center
In the Transpacific Centre
1000 Broadway, Suite 109
Oakland, CA 94607

Or from the following locations:

- Wells Fargo Building - 2140 Shattuck Avenue, Floor 6, Berkeley, CA 94704
- City of Dublin City Hall, 100 Civic Plaza, Dublin, CA 94568
- Fremont City Hall 3300 Capitol Ave, Building B Human Resources Training Room, Fremont, CA 94538
- Margaret Troke Library 502 W Benjamin Holt Dr., Stockton, CA 95207
- 1755 Harvest Landing Lane, Tracy, CA 95376

Via Zoom:

<https://ebce-org.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.

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.

1. Welcome & Roll Call

2. Pledge of Allegiance

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.

CONSENT AGENDA

- 4. Approval of Minutes from June 21, 2023**
- 5. Contracts Entered into (Informational Item)**
- 6. Amendment to Non-standard Rate Policy**
Revise policy to expand eligibility to beneficial electrification projects on municipal buildings
- 7. Approval Request for Agreement Amendment with Thrive Mind Collaborative**
Approval Request for Agreement Amendment with Thrive Mind Collaborative to provide coaching and consulting services to EBCE Staff.
- 8. Authorization to pay for postage**
Authorize the CEO to approve the funding of EBCE's accounts with the USPS in the amount of up to \$400,000.
- 9. Authorization to Execute Vehicle Lease and Consulting Agreement**
Authorize the CEO to execute a lease and Agreement for EBCE's Drive and Charge Research & Development Initiative
- 10. Treasurer's Report**
Report on EBCE's cash position as of June 30, 2023

REGULAR AGENDA

- 11. CEO Report**
- 12. CAC Report**
- 13. Energy Prepay #3 Approval (Action Item)**
Authorization to move forward in executing a third energy prepayment transaction
- 14. CEO Employment Contract (Action Item)**
- 15. Board Member and Staff Announcements including requests to place items on future Board agendas**
- 16. Adjourn**

The next Board of Directors meeting will be held on Wednesday, September 20, 2023 at 6:00 pm.



BOD Agenda with CAC Annotations

Board of Directors Meeting

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CONSENT AGENDA

4. Approval of Minutes from June 21, 2023

5. Contracts Entered into (Informational Item)

6. Amendment to Non-standard Rate Policy

Revise policy to expand eligibility to beneficial electrification projects on municipal buildings

support. Also support exploring non-standard rate policies for residential customers

7. Approval Request for Agreement Amendment with Thrive Mind Collaborative

Approval Request for Agreement Amendment with Thrive Mind Collaborative to provide coaching and consulting services to EBCE Staff.

8. Authorization to pay for postage

Authorize the CEO to approve the funding of EBCE's accounts with the USPS in the amount of up to \$400,000.

9. Authorization to Execute Vehicle Lease and Consulting Agreement

Authorize the CEO to execute a lease and Agreement for EBCE's Drive and Charge Research & Development Initiative

We request this item be pulled and discussed

10. Treasurer's Report

Report on EBCE's cash position as of June 30, 2023

REGULAR AGENDA

11. CEO Report

12. CAC Report

13. Energy Prepay #3 Approval (Action Item)

Authorization to move forward in executing a third energy prepayment transaction

**Support staff recommendation and have the board direct staff to consider ways to benefit investors within EBCE/Ava territory.
Passed unanimously with all members present**

14. CEO Employment Contract (Action Item)

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

16. Adjourn

The next Board of Directors meeting will be held on Wednesday, September 20, 2023 at 6:00 pm.



Draft Minutes

Board of Directors Meeting

Wednesday, June 21, 2023

6:00 pm

In Person

The Lake Merritt Room
Cal State East Bay - the Oakland Center
In the Transpacific Centre
1000 Broadway, Suite 109
Oakland, CA 94607

Or from the following locations:

- Wells Fargo Building - 2140 Shattuck Avenue, Floor 6, Berkeley, CA 94704
- City of Dublin City Hall, 100 Civic Plaza, Dublin, CA 94568
- Sheraton Fairplex Hotel and Conference Center 601 W. McKinley Ave. Pomona, CA 91768
- 1755 Harvest Landing Lane, Tracy, CA 95376
- 33349 9th Street (back office) Union City, CA 94587
- City of Pleasanton, City Council Conference Room, 200 Old Bernal Ave., Pleasanton 94566

Via Zoom:

<https://ebce-org.zoom.us/j/87023071843>

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1. Welcome & Roll Call

Present: Directors: Tiedemann (Albany), Hu (Dublin), Bauters (Emeryville), Cox (Fremont), Barrientos (Livermore), Hannon (Newark), Kalb (Oakland), Andersen

(Piedmont), Gonzalez (San Leandro), Wright (Stockton), Bedolla (Tracy), Patino (Union City), Eldred (Community Advisory Committee), Vice-Chair Balch (Pleasanton) and Chair Marquez (Alameda County)

Excused: Directors: Bartlett (Berkeley) and Roche (Hayward)

Director Hannon served as an alternate for Director Jorgens (Newark).

2. Pledge of Allegiance

Chair Marquez (Alameda County) led the body in the Pledge of Allegiance.

Chair Marquez (Alameda County) moved the Closed Session and Report Out of Closed Session to the end of the agenda. This action was received without objection.

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.

(4:31) Alita Dupree asked how greater use of green energy products can be encouraged and achieved. She mentioned that she is running on 100% solar power at home, which EBCE facilitates by simply selecting the appropriate option on the website. Alita Dupree also acknowledged EBCE's efforts to promote equity through programs such as the lending library for induction equipment and working with charging infrastructure. Dupree expressed hope that EBCE can expand its charging services to include larger electric vehicles like buses and trucks, and that electric scooters are being charged via Renewable 100. Alita Dupree urged staff to continue sourcing renewable energy and to strive for parity with PG&E.

The clerk read the first two minutes of the letters below into the record. Summaries of the letters are provided below:

(6:42) Letter #1: Tom Kelly raised concerns about missteps made by management that have resulted in significant financial losses and undermined the agency's reputation. Kelly advocated for improving the power content of EBCE's default product, Bright Choice, emphasizing the importance of clean, carbon-free electricity. He highlighted discrepancies between the promises made by EBCE and the actual plans for achieving carbon-free energy by 2030. Kelly questioned whether the focus on maximizing reserves and improving credit rating had led EBCE to purchase carbon-intensive electricity. He cited costly actions by EBCE management, including repeated failure to meet Resource Adequacy obligations, the purchase and expensive upgrades of an office building, and a controversial proposal to gift ratepayer funds to a hospital. Kelly estimated the financial losses to ratepayers to be over \$20 million and emphasized the loss of credibility and

confidence in EBCE. He urged the EBCE Board to closely evaluate the management team and take necessary actions to prevent further financial losses and reputational damage.

(9:00) Letter #2 Jim Lutz submitted a comment letter to the EBCE Board in response to the EBCE 2023-2024 Proposed Value Proposition Webinar he attended on June 6. Lutz expressed his belief that the practice of establishing EBCE rates relative to PG&E rates, although initially appropriate, is no longer necessary and is leading to higher charges for EBCE customers. He suggested a more fiscally responsible approach of estimating operating costs, considering market volatility risks, maintaining prudent reserves, and then dividing those costs across projected energy sales while preserving the current rate differences between EBCE products and rate classes. Lutz highlighted the lack of transparency in confirming the actual cost difference between EBCE and PG&E rates on his own bill. He compared his EBCE generation-only charges to the charges from Alameda Municipal Power (AMP) and found a significant difference, suggesting potential rate reductions for EBCE customers if rates were calculated independently. Lutz requested the Board to direct staff to evaluate alternative methods of setting rates based on EBCE's successful operations.

(12:16) Jessica Tovar, speaking on behalf of the East Bay Clean Power Alliance (EBCPA), highlighted the EBCPA's longstanding focus on advocating for a Community Choice program in the East Bay that prioritizes community benefits and avoids repeating the practices of PG&E. The EBCPA collaborated with the Labor community to advocate for the Local Development Business Plan (LDBP) and its various programs, aiming for increased investments in those areas. Recognizing the need to build resilience at home to combat the impacts of climate change, reduce pollution, and improve health on a global scale, they emphasized the importance of investing in programs like the LDBP to create jobs and enhance the community. Tovar acknowledged that the LDBP had been in operation for five years and suggested that it should be updated and evaluated to incorporate new ideas in response to the changing world. She expressed the desire to have that conversation following the board's budget vote.

CONSENT AGENDA

- 4. Approval of Minutes from May 17, 2023 and May 22, 2023**
- 5. Contracts Entered into (Informational Item)**
- 6. Administrative Procurement Policy**
Adopt a Resolution adopting an Amended and Restate Administrative Procurement Policy
- 7. Storage and Renewable Bid Optimization Software**
Adopt a Resolution to negotiate and execute a SaaS agreement with Ascend Analytics
- 8. New CSA with Dakota Press**
New CSA for printing and mailing services with Dakota Press Inc

9. Amend CSA with Celery Design

Amend CSA for design services with Celery Design

10. CAC: Stockton Seat and Six-Month Term Extension

Create interim seat for Stockton and extend Regional member terms by six months (i.e., through Dec 2023)

11. Amend CSA with MissionCTRL

Increase NTE effective June 2023

12. Legal Vendor Approval

Allow spend on specific legal vendors up to budgeted amount

(14:14) **Member Hu (Dublin)** noted that Director Qaadri's jurisdiction is incorrectly listed as "Berkeley" rather than "Dublin" in the roll call for the May 17, 2023 BOD minutes. Member Hu requested that Director Qaadri's jurisdiction be corrected.

Member Bauters (Emeryville) motioned to approve Consent Agenda, inclusive of Member Hu's correction request for the May 17, 2023 minutes. Member Gonzalez (San Leandro) seconded the motion which passed 11/0. Excused: Members Bartlett (Berkeley), Cox (Fremont), Roche (Hayward), Kalb (Oakland) and Bedolla (Tracy)

REGULAR AGENDA

13. CEO Report

(17:30) **CEO Chaset** reported that an Executive Committee meeting was held on June 7th, where discussions took place regarding the draft budget, a naming proposal presentation, and the creation of an interim Community Advisory Committee (CAC) seat representing the City of Stockton, along with a six-month CAC term extension. Chaset also reported that a Special Board Retreat for Marketing and Account Services was held on May 22nd. Additionally, the first meeting of the Marketing, Regulatory, and Legislative Subcommittee (MRL) was held on June 16th, although it lacked a quorum. Chaset introduced two new interns, Kentaro Kawasaki and Mikayla "MK" Newsome-Rouse, who joined the Human Resources (HR) department.

14. CAC Report

(19:45) **CAC Chair Eldred** expressed deep gratitude to JP Ross and everyone involved in the Local Development Business Plan (LDBP) and the Community Grants. Eldred reported on a public forum that garnered significant participation and diverse representation, including past grant recipients, potential recipients, faith groups, domestic violence teams, hunger and security response teams, faith organizations, and community organizations. The meeting utilized a hybrid format with both in-person and online attendees. The summary of the meeting highlighted appreciation for the Board's direction regarding longer sustained grants over three-year periods. However, there

was consistent feedback emphasizing the importance of small Innovation Grants. Eldred cited past successful experiences with providing \$40,000 grants to run pilot programs, offering support and guidance to recipients for effective implementation. Additionally, there was widespread support for recognizing organizations already engaged in community work, particularly in communities with lower engagement levels, as they have established trust, communication channels, and participation that can facilitate outreach efforts in those communities.

15. EBCE FY 2023-24 Budget (Action Item)

Adopt a resolution approving the FY23-24 budget

The Board Discussed:

- (37:34) Observing that EBCE has approximately 60-80% of its budget year energy portfolio hedged against market prices with the balance effectively hedged via the PCIA (see slide 10, “Risk Management - Market Risk”), **Member Gonzalez (San Leandro)** asked for staff to provide benchmarks of EBCE’s risk management hedging practices relative to other community choice aggregators and PG&E.
- (39:40) **Member Gonzalez (San Leandro)** asked for staff to provide an explanation of the PCIA as a type of “self-insurance”.
- (41:25) Following CEO Chaset’s explanation of the PCIA charge, **Member Gonzalez (San Leandro)** asked if higher energy prices are a good thing for EBCE’s margins.
- (42:03) **Member Gonzalez (San Leandro)** stated that, from a financial risk management perspective, the board would want to know the potential implications of risk management hedging strategies for the budget. **CEO Chaset** responded with an explanation for why the PCIA is preferred as a hedging mechanism.
- (43:41) **Member Gonzalez (San Leandro)** requested that future budgets include a percentage range (or likelihood) for implications that are provided in the modeling assumptions.
- (45:03) **Member Bauters (Emeryville)** asked if EBCE provides a position control sheet that tracks employees by position number and assignment, and that the board would approve alongside the budget. **Member Bauters (Emeryville)** requested that EBCE consider providing a position control sheet in future budgets even if it is not required to do so.
- (47:52) **Chair Marquez (Alameda County)** requested that the Financial, Administration and Procurement Subcommittee discuss the incorporation of a position control sheet in the agency’s personnel policy.
- (48:57) Noting the projected growth in headcount from 43 to 83 from FY 2021-22 to FY 2023-24 (see slide 26, “Draft Budget: Overhead Expenses - Personnel”), **Member Andersen (Piedmont)** asked CEO Chaset to describe his vision for the growth of the agency.
- (51:32) Referring to slide 29, “Draft Budget: Open Position Count”), **Chair Marquez (Alameda County)** asked for CEO Chaset to explain how positions are prioritized with regards to hiring order.
- (52:58) Referring to slide 30, “Draft Budget: Personnel Demographics”, **CAC Chair Eldred** requested the inclusion of equity metrics, for example, salary

differences by race and gender, or the salary difference between highest and lowest paid.

(54:42) Noting that on slide 12, “Draft Budget: Local Development Fund”, the Energy Efficiency budget is listed as “No Direct EBCE Cost”, **Jim Lutz** stated that, in previous years, EBCE was granted the authority to run efficiency programs with rate payer public funds that are administered by the CPUC. Jim Lutz asked why this funding is not listed in the budget, and if this funding is listed elsewhere.

(56:13) Alita Dupree expressed satisfaction with the budget and highlighted the positive aspects of increasing the value proposition and narrowing the premium for Renewable 100 to a quarter of a cent. Alita Dupree stated that this adjustment will serve as an incentive for more individuals and businesses to opt for Renewable 100 and actively participate in emissions-free energy. Alita Dupree also expressed hope that the budget’s favorable conditions would attract more people to join EBCE, ultimately leading to economies of scale and the ability to offer lower energy prices to a wider audience.

The clerk read the following letter into the record:

(58:02) Letter #3 Jessica Tovar called on the Board of Directors to increase funding for community-based energy resilience in the 2023-2024 budget five-fold (from \$2M-\$4M to \$10M) to fund microgrids for Community-Based Organizations. Tovar emphasized the need for planning and implementing community-based microgrids at trusted resilience hubs to address the energy access and equity challenges faced by marginalized communities, including low-income, people of color, immigrant, disabled, and senior community members during disasters and power shut-offs. She expressed concerns that the current focus on resilient critical municipal facilities does not adequately serve these communities. Tovar urged EBCE to adapt the microgrid project to include community-accessible and community-trusted places such as community centers, shelters, senior centers, places of worship, and other identified locations. She highlighted the potential benefits of community-based microgrids in reducing energy bills, providing energy resilience, and supporting local distribution and transmission grids.

(1:02:19) Jessica Tovar stated that EBCE should consider applying, alongside community-based organizations, for Strategic Growth Council funding and other state or federal opportunities. Tovar also highlighted the need for transparency regarding the allocation of the \$5 million earmarked for Healthy Communities, including disclosure of collaborative partners and information about the study. She emphasized the importance of replenishing the Community Innovation grants annually rather than making it a one-off program, noting the urgent need for the funds to be dispersed in the community. Tovar appreciated the commitment to three-year funding for larger grants but also supported smaller grants for communities and projects that are still in the exploratory stage, recognizing the ongoing challenges faced by communities in addressing energy and social justice issues. She referred to the insights gained from the workshop hosted by the Local Development Business Plan team, where many of these issues were discussed.

The Board Discussed (continued):

- **(1:04:37)** Referring to slide 8, “Draft Budget: Value Proposition Alternatives”, **Chair Marquez (Alameda County)** requested that CEO Chaset describe the value proposition discount options for which staff is seeking direction from the board.
- **(1:05:20)** **Chair Marquez (Alameda County)** requested that CEO Chaset address the pros and cons if the board opted for the 4% value proposition discount.
- **(1:07:37)** Noting his sense that the energy markets are currently expensive, **Member Gonzalez (San Leandro)** asked if it would be a better long-term deal for EBCE to wait to buy incremental carbon free energy until the markets are closer to equilibrium.
- **(1:11:26)** **CAC Chair Eldred** expressed strong support for staff’s recommendation on the value propositions, endorsing the five percent discount for Bright Choice and reducing the increased cost for customers opting into the Renewable 100 product. Eldred highlighted the impact of rising prices on rate-payers, and emphasized the importance of mitigating these increases. **The modification proposed by the CAC is to change the 50/50 split in the waterfall, keeping the \$14.75 million for either lowering carbon content, supporting local development, or supporting resilience centers and virtual power plant efforts.** Eldred emphasized the importance of preserving the \$50 on-bill credit for medical baseline customers, as recommended by staff. CAC Chair Eldred also pointed out that additional funding could support expanding resilience efforts to school districts and public service agencies, including the hiring of more staff. Eldred stated that the CAC’s modification could be seen as a solution to support community-based organizations who are working on building resilience hubs. Eldred emphasized the risk rate-payers face in the event of power outages and the importance of addressing that risk, particularly for medical baseline customers and low-income individuals. By keeping the \$50 bill credit, EBCE would stand apart from PG&E.
- **(1:15:46)** **Chair Marquez (Alameda County)** asked for CEO Chaset to respond to Jessica Tovar’s public comment remarks (see public comment at 1:02:19) about the \$5M earmark for the Healthy Communities initiative.
- **(1:16:52)** **Chair Marquez (Alameda County)** asked for CEO Chaset to provide an update about the future plans for EBCE’s building asset.
- **(1:18:00)** Noting the increase in prices in energy and an increase in the percentage and dollar amount of uncollectibles, **Member Hannon (Newark)** encouraged the board to maintain the discount rate at 5% and to track inflation over the next year.

The clerk read the following public comment letter into the record:

(1:19:11) Letter #4 - Audrey Ichinose referenced a Stanford study highlighting the harmful effects of cooking with gas stoves, comparing it to breathing in car exhaust. Ichinose suggested that EBCE could streamline the Health-E Communities Program and utilize surplus funds earmarked for Local Development by giving away portable induction cooktops to interested households below a certain income threshold. Audrey Ichinose stated that this approach, which is supported by peer-reviewed studies, would promote healthier and more efficient cooking methods without the need for extensive tracking of household appliance usage.

The Board Discussed (continued):

- (1:21:46) Member Tiedemann (Albany) spoke in favor of expanding staff capacity, if necessary, to increase investment in local programs.

(1:21:46) Member Tiedemann (Albany) motioned to approve the staff recommendation for the EBCE FY 2023-24 Budget. Member Gonzalez (San Leandro) seconded the motion.

The Board Discussed (continued):

- (1:23:07) Noting the CAC's recommendation to forgo the nearly \$10 on bill credit, Member Kalb (Oakland) asked CEO Chaset if the bill credit was one time or annual.
- (1:23:51) Member Kalb (Oakland) asked CEO Chaset to confirm that the agency could absorb increasing location development up to \$3M and still be able to function.
- (1:25:34) Chair Marquez (Alameda County) asked if the increased local development funds could be used to expand the resilience hub program.
- (1:28:21) CAC Chair Eldred offered to provide staff with materials for site management and stated that CAC members and the public agreed \$14.75M was enough funding to move forward with a project over the course of a fiscal budget.

(1:37:24) Member Bauters (Emeryville) made a substitute motion to approve the EBCE FY 2023-24 budget as recommended but to, in accordance with the recommendation of the CAC, change the 50/50 split so that the one-time on-bill credit that was to be assigned in the upcoming fiscal year is held in an unassigned fund to be determined at a future date by the board. The substitute motion was seconded by Member Kalb (Oakland). The motion was approved 13/1/2

Nay: Member Hannon (Newark)

Excused: Members Bartlett (Berkeley) and Roche (Hayward)

16. Energy Prepay Transaction #3 (Action Item)

Adopt a resolution to be enabled with counsel and advisers for prepay transaction

The Board Discussed:

- (1:50:10) Member Gonzalez (San Leandro) requested a private session or teaching session about managing risk due to the complexity of these transactions.

Member Gonzalez (San Leandro) motioned to approve the staff recommendation. Member Barrientos seconded the motion, which passed 13/0.

Excused: Members Bartlett (Berkeley) and Kalb (Oakland)

17. New Brand Name Proposal (Action Item)

Present the process and proposed new name for EBCE

The Board Discussed:

- **(2:04:38) Member Andersen (Piedmont)** cautioned that staff should try to minimize the connection between the new brand name and an actual person.
- **(2:05:23) Member Barrientos (Livermore)** asked for the total cost of re-branding project and if that budget takes into account the cost to cities to adopt the re-brand.
- **(2:06:46) Member Wright (Tracy)** stated that the ad hoc re-brand committee adopted the current proposal after considering many names because it feels inclusive and that it is expected to be well received across the service territory.
- **(2:07:53) Chair Marquez (Alameda County)** asked for staff to respond to the suggestion, made at the June 7, 2023 Executive Committee meeting, to capitalize the “A” and the “V” in “Ava”. Chair Marquez also asked for staff to clarify that the goal is to always retain “Community Energy” portion of the name.

(2:09:00) Jessica Tovar shared feedback that she received from community meetings regarding the proposed name change." The comments she gathered expressed a dislike for the new name, emphasizing the value respondents placed on "Community Energy" and the importance of maintaining its association with the proposed name, "Ava". Participants also noted that most Community Choice Aggregators preferred names based on geography. Concerns were raised about genderizing the name and adopting a name that evokes a consumer product than an energy agency.

(2:11:20) Blair Beekman spoke regarding the importance of retaining the concept of "Community Energy" in any future name. Blair Beekman stated that, as a community choice aggregator, it is crucial for this agency to ensure that people feel invited to participate. Blair Beekman stated that his goal is for the community to feel engaged in the energy transition process.

The Board Discussed (continued):

- **(2:13:02) CAC Chair Eldred** acknowledged the effort and evolution of the presentation on the proposal to re-brand as "Ava Community Energy." CAC Eldred noted that the Re-brand Ad Hoc Committee had time to arrive at a consensus on the name. On the other hand, the CAC did not pass the motion to support the name. CAC members highlighted the need for "Ava Community Energy" to be explicitly stated and expressed concerns about the tech-oriented feel of the name and its potential genderization. CAC Chair Eldred noted that, while not all of the initial feedback was positive, two CAC members expressed enthusiastic support.
- **(2:15:36) Member Gonzalez (San Leandro)** motioned to approve the staff's recommendation as a market-facing brand name for this agency, and that staff hereby is directed to use "Ava Community Energy" for all marketing materials related to the agency starting October 23 or is determined by the direction of the CPUC. Member Barrientos seconded the motion.
- **(2:16:15) Member Bauters (Emeryville)** stated that he will not support the staff recommendation because of the genderization of the name and the possible confusion of "Ava Community Energy" with the ACE train service that runs from Alameda County to the San Joaquin Valley.
- **(2:18:58) Chair Marquez (Alameda County)** expressed support for the staff recommendation, and for maintaining "Community Energy" as a key part of the success of the re-brand.

(2:19:26) Member Gonzalez (San Leandro) motioned to support the staff recommendation. Member Barrientos (Livermore) seconded the motion, which passed 11/2/3

Nays: Members Bauters (Emeryville) and Cox (Fremont)

Excused: Members Bartlett (Berkeley), Roche (Hayward) and Kalb (Oakland)

18. Emissions Overview (Informational Item)

Informational Overview on Emissions

(2:20:40) Chair Marquez (Alameda County) tabled the Emissions Overview item to the July 19, 2023 Board of Directors meeting.

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

- **(2:21:42) CAC Chair Eldred** requested to place two items on future Board agendas:
 - CAC Chair Eldred requested to place the five-year review of the Local Development Business Plan on the agenda.
 - CAC Chair Eldred requested to place a presentation on the collaboration between service territory municipal sustainability departments and CAC members on the agenda at an appropriate future time.

20. Closed Session

- Conference with Labor Negotiators pursuant to Government Code 54957.6. (Labor negotiators: Elisa Marquez) (Unrepresented employee)
- Conference with Legal Counsel: Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (1 case)

21. General Report Out of Closed Session

There were no items to report out of closed session.

22. Adjourn

The next Board of Directors meeting will be held on Wednesday, July 19, 2023 at 6:00 pm.



Consent Item 5

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: Contracts Entered Into

DATE: July 19, 2023

RECOMMENDATION

Accept the CEO's report on contracts that EBCE has entered, as required by the Administrative Procurement Policy from June 14, 2023, to July 12, 2023;

C-2023-052 Granicus Fourth Amendment to Granicus Service Agreement authorizes services for FY 23/24 at a cost of \$42,876.51, for FY 24/25 at a cost of \$48,877.87 and for FY 25/26 at a cost of \$49,089.32.

C-2023-053 Stantec Fifth Amendment to CSA adds \$150,000 in compensation for a total amount not to exceed \$400,000 and extends the term through December 29, 2023.

C-2023-054 Port of Oakland, West Oakland Environmental Indicators Project, Earthjustice, EBCE, Environmental Defense Fund, UCB Goldman School of Public Policy, Union of Concerned Scientists; West Oakland Sustainable Port Collaborative & Port of Oakland Partnership Agreement Re: Planning Grants Coordination for Seaport Transition to Electrification and Zero-Emissions and for Community Environmental Benefits - EBCE is part of a collaborative working group with the Port of Oakland & others. The group was convened by the Port and West Oakland Environmental Indicators Project and we were invited to participate. To solidify the working group spirit, the group developed a Partnership Agreement that details the scope of the work of the partnership and documents the 'spirit of collaboration'. The agreement is non-binding.

C-2023-055 Moody's Analytics Order Form, subscription to Moody's credit evaluation and monitoring tool for 1 year, at a cost of \$15,000 through June 30, 2024

C-2023-056 Coursera Order Form, 2 year Agreement from August 2023 to August 2025 at a cost of \$47,250 for Coursera portal and Coursera training content for EBCE staff.

C-2023-057 cQuant.io Second Amendment to CSA, adds additional compensation in the amount of \$20,000 for the cost of establishing a dedicated server environment, with total compensation not to exceed \$601,000.

C-2023-058 Ascend Analytics SaaS Agreement, two-year Agreement for bidding and scheduling software platform with option to extend for an additional year, cost of \$11,275.

C-2023-059 JumpCloud Software Subscription for JumpCloud Kickstart software as service for a 1-year term, total cost \$13,100.

C-2023-060 Comcast Effectv Agreement, 1 year Agreement for digital ads, total compensation not to exceed \$42,000.

C-2023-061 Maher Accountancy Second Amendment to CSA, adds \$19,000 in compensation for additional services related to online budget portal development, total compensation not to exceed \$544,400.

C-2023-062 Alan Comnes dba New Energy Works (NEW) Second Amendment to CSA clarifies the scope of work, updates the hourly rate of compensation, adds an additional \$21,000 in compensation, total compensation is not to exceed \$71,000, and extends the term through June 30, 2025.

C-2023-063 Dakota Press (San Leandro) Consulting Services Agreement, printing and mailing services through June 30, 2024, with compensation not to exceed \$400,000.



Consent Item 6

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, Vice President Marketing & Account Services

SUBJECT: Amend and Approve Non-Standard Pricing Rate and Billing Agreement Policy (Action Item)

DATE: July 19, 2023

Recommendation

Adopt the Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy to extend the offer of non-standard pricing and billing rates to municipal customers implementing beneficial electrification projects.

Background and Discussion

In September 2019, the Board of Directors approved a Non-Standard Pricing Rate Agreement Policy in order to retain large customers that were offered or expanding their Direct Access service and for Direct Access customers who return to EBCE service. The original Non-Standard Pricing Rate Agreement Policy serves to retain significant foundational baseline load.

Since the implementation of the Non-Standard Pricing Rate Agreement Policy, EBCE has used this tool to retain two large customers who were offered Direct Access and to support the return of a large customer from Direct Access to EBCE service.

At this time, EBCE would like to apply the use of a Non-Standard Pricing Rate Agreement to a new scenario: the beneficial electrification of municipal buildings.

The specific use case currently under consideration is the electrification of the municipal pool in the city of Piedmont.

Non-Standard Pricing Rate and Billing Agreement

There is no change to the Agreement requirements of:

- Rates must be cost-based
- Rates that do not transfer the risk of Power Charge Indifference Adjustment (PCIA) rate changes onto EBCE
- Rates designed to achieve some level of contribution to EBCE's fixed cost, reserve margin, and programs
- Provide power that is in line with current service options (Bright Choice, Renewable 100)

Fiscal Impact

The Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy has no fiscal impact, but any subsequent Agreements would have a fiscal impact. Such Agreements will need to meet the existing requirement of the Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy to “be priced to allow EBCE to cover variable costs and achieve some level of contribution to fixed cost, reserve margin, and programs.”

Attachments

- A. Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy (Redlined)
- B. Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy (Clean)
- C. Resolution to Adopt the Amended and Restated Non-standard Pricing Rate and Billing Agreement Policy

AMENDED AND RESTATED
EAST BAY COMMUNITY ENERGY
NON-STANDARD PRICING RATE AND BILLING AGREEMENT POLICY

Policy 13.1

Agenda Date: July 19, 2023

Resolution Number:

When offering ~~Non-Standard Pricing Rate and Billing Agreements~~ (“~~Agreement~~”) for electric generation service to eligible customers, EBCE adheres to a defined ~~Non-standard Pricing Rate and Billing Agreement~~ policy (“~~Policy~~”). Under this ~~Policy~~, the ~~Non-Standard Pricing Rate and Billing Agreement~~ must comply with the following requirements:

1. The ~~Agreement~~ must be with a large commercial, industrial, agricultural, or municipal customers with one or more accounts on Direct Access, ~~or~~ granted a Direct Access allocation, or that is implementing beneficial electrification projects on a municipal building,
2. the ~~Agreement~~ must be marginal cost-based and account for any volume and/or price risk, including risk associated with investor-owned utility fees,
3. the ~~Agreement~~ must be priced to allow EBCE to cover variable costs and achieve some level of contribution to fixed cost, reserve margin, and programs,
4. the ~~Agreement~~ must require a commitment level from the customer (e.g. volume, length of term) commensurate with the ~~non-standard pricing rate and billing Agreement~~ offered to the customer,
5. the ~~Agreement~~ must provide power that is at least as low emitting as, and with at least as much renewable energy content as, the Bright Choice or other EBCE baseline standard service, and
6. the ~~Agreement~~ must be used to leverage an opportunity to prevent departing load, ~~or~~ gain load previously on Direct Access service, or support the implementation of beneficial electrification projects on a municipal building.

Commented [1]: Should this be a reference to the rate rather than the Agreement.

AMENDED AND RESTATED
EAST BAY COMMUNITY ENERGY
NON-STANDARD PRICING RATE AND BILLING AGREEMENT POLICY

Policy 13.1

Agenda Date: July 19, 2023

Resolution Number: XX

When offering Non-Standard Pricing Rate and Billing agreements (“Agreement”) for electric generation service to eligible customers, EBCE adheres to a defined Non-standard Pricing Rate and Billing Agreement policy (“Policy”). Under this Policy, the Agreement must comply with the following requirements:

1. The Agreement must be with a large commercial, industrial, agricultural, or municipal customer with one or more accounts on Direct Access, granted a Direct Access allocation, or that is implementing beneficial electrification projects on a municipal building,
2. the Agreement must be marginal cost-based and account for any volume and/or price risk, including risk associated with investor-owned utility fees,
3. the Agreement must be priced to allow EBCE to cover variable costs and achieve some level of contribution to fixed cost, reserve margin, and programs,
4. the Agreement must require a commitment level from the customer (e.g., volume, length of term) commensurate with the rate offered to the customer,
5. the Agreement must provide power that is at least as low emitting as, and with at least as much renewable energy content as, the Bright Choice or other EBCE baseline standard service, and
6. the Agreement must be used to leverage an opportunity to prevent departing load, gain load previously on Direct Access service, or support the implementation of beneficial electrification projects on a municipal building.

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO AMEND AND APPROVE THE
NON-STANDARD PRICING RATE AND BILLING AGREEMENT POLICY**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) 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. The City of Stockton, located in San Joaquin County was added as a member of EBCE and party to the JPA in September of 2022.

WHEREAS the Board approved the original Non-standard Pricing Rate Agreement Policy on September 18, 2019, to retain eligible commercial and industrial customers;

WHEREAS this Non-standard Pricing Rate Agreement Policy can be useful to municipal customers as a mechanism to finance beneficial electrification projects on municipal buildings and make payments via their utility bill;

WHEREAS expanding the eligibility of the Non-standard Pricing Rate Agreement Policy to municipal customers will support the climate action goals of member jurisdictions.

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

Section 1. The Board hereby adopts the Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy as attached as Exhibit A.

Section 2. The Board hereby delegates authority to the Chief Executive Officer to negotiate and execute non-standard pricing rate and billing agreements with eligible commercial, industrial, and municipal customers, provided that the pricing and billing agreements meet the minimum requirements set forth in the Amended and Restated Non-Standard Pricing Rate and Billing Agreement Policy.

ADOPTED AND APPROVED this 19th day of July, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Consent Item 7

TO: East Bay Community Energy Board of Directors

FROM: Trevor Cherr

SUBJECT: Approval for Agreement with Thrive Mind Collaborative

DATE: July 19, 2023

Recommendation

Adopt a Resolution authorizing the CEO to negotiate and execute an Amendment to the existing Agreement with Thrive Mind Collaborative to provide experience-based business coaching and consulting services to employees in partnership with the Human Resources Team.

Background and Discussion

In Fiscal Year 2022-2023, the Human Resources Team conducted “pilot” groups to gauge the impact of and satisfaction with various learning and development and coaching programs. Part of this included working with Thrive Mind Collaborative, who provided coaching and consulting services for 6 months. With great success and desirable outcomes, including high satisfaction and a desire to continue from participants, we are now moving forward with Thrive Mind Collaborative as our consulting and coaching partner. With 12 years of experience in leadership, operations, and learning and development, the lead coach working with EBCE will provide consulting services, including an executive coaching program, emerging leaders coaching program, staff workshops and training, and other related support or consulting services. Several other consultants and coaching programs were part of the pilot last Fiscal Year, and Thrive Mind Collaborative is the chosen partner moving forward.

Fiscal Impact

This is an annual agreement for one year and may incur costs of up to \$130,000.00 in the 2023-2024 Fiscal Year.

Attachments

A. Resolution

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO
AMEND THE AGREEMENT WITH THRIVE MIND COLLABORATIVE**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) 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. The city of Stockton, located in San Joaquin County was added as a member of EBCE and party to the JPA in September of 2022; and

WHEREAS Thrive Mind Collaborative has provided experience-based business coaching and consulting services to EBCE employees in partnership with the Human Resources Team. With 12 years of experience in leadership, operations, and learning and development, the lead coach working with EBCE will provide consulting services, including an executive coaching program, emerging leaders coaching program, staff workshops and training, and other related support or consulting services; and

WHEREAS in Fiscal Year 2022-2023, the Human Resources Team at EBCE conducted “pilot” groups to gauge the impact of and satisfaction with various learning and development and coaching programs. Part of this included entering an agreement with Thrive Mind Collaborative, who provided coaching and consulting services for 6 months (“Agreement”). With great success and desirable outcomes, including high satisfaction and a desire to continue from participants, we are now moving forward with Thrive Mind Collaborative as our consulting and coaching partner. Several other consultants and coaching programs were part of the pilot last FY, and Thrive Mind Collaborative is the chosen partner moving forward; and

WHEREAS EBCE staff participated in a 6-month program in Fiscal Year 2022-2023 with the Human Resources Team and Thrive Mind Collaborative, with coaching and related consulting services provided, leading to successful outcomes and high alignment with EBCE culture and objectives; and

WHEREAS consulting and coaching services provided by Thrive Mind Collaborative will be scheduled to begin immediately following approval. Thrive Mind Collaborative will provide consulting services, including an executive coaching program, emerging leaders coaching program, staff workshops and training, and other related support or consulting services; and

WHEREAS staff now desires to amend the Agreement to extend the Agreement's term through June 30, 2024, and to increase the scope of work to include additional consulting, training, and workshop services, and to increase compensation by \$130,000 for a new total compensation amount not to exceed \$160,000.

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

Section 1. Authorize the CEO to negotiate and execute an Amendment to the Agreement with Thrive Mind Collaborative for the Fiscal Year 2023-2024 with compensation not to exceed \$160,000 for additional coaching and consulting services.

ADOPTED AND APPROVED this 19th day of July, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Dan Lieberman, Director of Marketing

SUBJECT: Authorize the CEO to approve the funding of EBCE's accounts with the United States Postal Service (USPS)

DATE: July 19, 2023

Recommendation

Approve a Resolution authorizing the CEO to approve the funding of East Bay Community Energy's (EBCE) accounts with the United States Postal Service (USPS) in the amount of up to \$400,000 in periodic installments in order to purchase postage for the 2023-2024 fiscal year.

Background and Discussion

EBCE sends out hundreds of thousands of pieces of mail each year. We always send communications by email when that is a viable option, but email use is limited to customers who have an email address on file with PG&E, and also there are instances when the use of hard copy mail is considered a best practice in marketing communications. The 2023-2024 marketing plan includes the use of substantial quantities of hard-copy mail, including the distribution of our two annual mailers required by state regulators (the Joint Rate Comparison with PG&E, and our Power Content Label) that go to all EBCE customers, as well as a planned system-wide mailer regarding our re-brand and new name.

USPS is the sole-source provider of mass mail delivery.

Historically, EBCE's printing services provider paid the USPS costs up front and then invoiced EBCE for reimbursement. We have not needed to seek board approval for postage expenses previously because this arrangement was addressed in our printing and mailing service contract with the printing services provider. However, as our mailing load increases, postal rates go up, and our vendors are financially stretched thin, we can no longer expect the printing services provider to continue to pay the

costs of postage up front. Instead, we will need to fund our USPS accounts in periodic installments in order to purchase postage for the 2023-2024 fiscal year.

Fiscal Impact

There are funds in the current Marketing and Account Services budget allocated for these mailing services.

Attachments

- A. Resolution

RESOLUTION NO. R-2023-XX
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO
AUTHORIZE THE CEO TO APPROVE THE FUNDING OF EBCE’S ACCOUNTS WITH
THE UNITED STATES POSTAL SERVICE

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) 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. The city of Stockton, located in San Joaquin County was added as a member of EBCE and party to the JPA in September of 2022.

WHEREAS EBCE sends out hundreds of thousands of pieces of mail each year, and plans to do so during the 2023-2024 Fiscal Year, requiring postage costing hundreds of thousands of dollars, and

WHEREAS historically, EBCE’s printing services provider has fronted the cost of postage and then received reimbursement from EBCE. Now, due to increasing mailing load, increased postal rates, and vendors’ limited financial resources, it is no longer reasonable to require the printing services provider to front the costs of postage, and

WHEREAS the United States Postal Service (USPS) is the sole-source provider of mass mail delivery.

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

Section 1. Authorize the CEO to approve the funding of EBCE’s accounts with the USPS in the amount of up to \$400,000 in periodic installments in order to purchase postage for the 2023-2024 fiscal year.

ADOPTED AND APPROVED this 19th day of July, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Consent Item 9

TO: East Bay Community Energy Board of Directors

FROM: JP Ross, VP Local Development, Electrification and Innovation

SUBJECT: Authorizing CEO to negotiate and execute Leases and Consulting Services Agreement with Zevvy for EBCE Drive and Charge Research and Development Initiative

DATE: July 19, 2023

Recommendation

Approve a Resolution authorizing the CEO to negotiate and execute Leases and Consulting Services Agreement with Zevvy to develop and implement the Drive and Charge Research and Development Initiative

Background and Discussion

East Bay Community Energy (EBCE) is working to increase adoption of zero-emission vehicles and access to equitable charging across our service area. Our public DC Fast Charging (DCFC) network is a \$30 Million investment to make electric vehicle (EV) charging accessible and affordable to communities where private sector investments have largely lagged or not existed, especially around affordable multi-family housing. Our EV adoption program will start with a \$6 Million Program over three years to ensure that customers better understand EVs & charging, have a positive first experience with both, and can more simply navigate the process to access their first EV. These substantial investments will be more effectively spent if they can be better designed out of the gate based on real-world research and development.

The Drive and Charge Research and Development Initiative (Drive and Charge R&D) will utilize EBCE staff to test our program design assumptions, compare against our competitors, and assess the user experience and technology in EVs and charging. Drive and Charge R&D will be managed by EBCE with vehicle procurement and data

collection from Zevvy, a third-party manufacturer-neutral EV leasing company. Key components of this Drive and Charge R&D initiative include:

- **Procure and maintain 6 different EV models.** Zevvy would procure leases and maintain six different EV models up to 12 months to enable EBCE staff to conduct market research on EVs and publicly available charging network operators to determine how to best structure EBCE's EV adoption program and DCFC charging network. Separately, EBCE would procure a suitable automobile insurance policy to cover the EVs.
- **Guidelines for EBCE staff to use the EVs for the Drive and Charge R&D initiative.** Employees would utilize the EVs for roughly a 2-week period and do so as their primary mode of transportation during that time. EBCE will have a participation policy & agreement that includes usage requirements (e.g. following all laws, only approved drivers, approving telematics data collection from the vehicle) and requirements (e.g. completing EV experience and public DCFC experience surveys) for each employee to sign. Employees would not be compensated for using vehicles or providing market feedback.
- **EV training and support.** Zevvy and EBCE would develop training and support materials for participating in the Drive and Charge R&D initiative to facilitate a good user experience for first time EV and DCFC users. This training & support, adapted via feedback from participating staff, would become a model for what EBCE will provide customers in our EV adoption program and broader marketing materials.
- **Survey development and collection.** EBCE staff and their passengers will be required to complete surveys for us to assess the driving/riding experience, public DCFC experience, market gaps, and opportunities.
- **Data collection.** Zevvy would collect and report out to EBCE on key data points related to driving (e.g. vehicle miles traveled, range) and charging (e.g. total kWh, average kW rate) for the EVs in use.

As a result of this Drive and Charge R&D initiative, we expect to have 144 two-week lending research sessions (~2 sessions/staff person) that will result in 576 new EV driver & passenger surveys and at least 288 public DCFC network surveys. The survey data along with the data collected by Zevvy will contribute to the build out of our DCFC network, the software, and the design & implementation of our EV adoption programs.

Selection of Zevvy

Zevvy is a local East Bay business based in Hayward that provides short term leases to accelerate EV adoption. Zevvy's flexible short-term leases allow customers to try EVs before committing to a long-term lease or purchasing an EV. EBCE evaluated several

options to acquire EVs for the Drive and Charge R&D initiative and Zevvy provided the most flexible terms and fastest delivery of EVs for the Drive and Charge R&D initiative.

Fiscal Impact

The Drive and Charge R&D initiative would be funded with existing Local Development transportation electrification funds. Compensation to Zevvy for the Drive and Charge R&D initiative will not exceed \$85,000.

Attachments

- A) RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE LEASES AND CONSULTING SERVICES AGREEMENT WITH ZEVVY FOR THE EBCE DRIVE AND CHARGE RESEARCH AND DEVELOPMENT INITIATIVE

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO AUTHORIZE THE CEO TO NEGOTIATE AND EXECUTE LEASES AND CONSULTING SERVICES AGREEMENT WITH ZEVVY FOR THE EBCE DRIVE AND CHARGE RESEARCH AND DEVELOPMENT INITIATIVE

WHEREAS The East Bay Community Energy Authority ("EBCE") was formed as a community choice aggregation agency ("CCA") 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. The city of Stockton located in San Joaquin County, was added as a member of EBCE in December of 2022.; and

WHEREAS EBCE seeks to support the adoption of electric vehicles (EV) across its service territory to reduce greenhouse gas and particulate emissions that disproportionately impact lower income and disadvantaged communities; and

WHEREAS the EBCE Board approved \$30 Million for an EBCE-owned public DC Fast Charging network and \$6 Million for an EBCE EV adoption program; and

WHEREAS the initiative proposed by EBCE allows us to internally research, test, and develop market entry and success of our EV adoption program and DC Fast Charging network; and

WHEREAS EBCE has negotiated the scope, implementation timeline, goals, and budget to ensure a successful and informative initiative.

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

Section 1. THE CEO is hereby authorized to negotiate and execute Leases and Consulting Services Agreement for the development and implementation of EBCE's Drive and Charge Research and Development Initiative with total compensation not to exceed \$85,000, subject to the approval of the General Counsel.

ADOPTED AND APPROVED this July 19, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Consent Item 10

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Treasurer’s Report (Informational Item)
DATE: July 19, 2023

Recommendation

Receive report on EBCE’s cash position.

Background and Discussion

For the quarter ending June 30, 2023, EBCE has maintained a positive cash balance on all EBCE bank accounts. Below is a summary of account balances, cash received, and outstanding loan balances.

Account Balances as of 6/30/2023

Account	Amount
Internal Operating	\$ 3,018,661
Operating Fund	\$ 150,112,887
Lockbox (Includes \$1,000,000 reserve)	\$ 19,613,117
Union Bank	\$ 35,000,000
Money Market	\$ 6,548,387
Insured Cash Sweep	\$ 130,769,347
Wells Fargo	\$ 585,873
Total	\$ 345,648,272

Cash Received by Month into Lockbox Account

April	2023	\$ 71,068,408
May	2023	\$ 72,123,255
June	2023	\$ 75,821,767
Total		\$219,013,430

Outstanding Loan Balances:

Union Bank Credit Facility: \$0.00

Customer Delinquency:

As of June 30, 2023

31 - 60 Days: \$ 6,252,647

61 - 90 Days: \$ 5,001,063

91 - 120 Days: \$ 4,391,791

120+ Days: \$ 34,750,237



CEO Report Item 11

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: July 19, 2023

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

The July 5, 2023 Executive Committee Meeting was canceled. The next Executive Committee meeting will be held on Wednesday, September 6, 2023.

Finance, Administration and Procurement Subcommittee Meeting

A meeting of the Finance, Administration and Procurement Subcommittee was held on Wednesday, July 12, 2023. Members discussed the upcoming 2023 FAP Agenda Items schedule, received an overview of the 2023 Long-Term Resource RFO and reviewed next steps for EBCE's third energy prepay transaction. The next meeting of the Financial, Administration and Procurement Subcommittee will be held in September at a time to be determined.

Special Board Retreat - Analytics

A Special Board Retreat - Analytics was held on Thursday, July 13, 2023. Members received an update from the Analytics team about its current activities. This retreat concludes the series.

Brand Identity Update

Following the approval on the new agency name of Ava Community Energy at last month's board meeting, staff started work on the updated visual identity. Staff continues to work with the ad hoc committees of the Board and Community Advisory Committee to get feedback on the logo. There is a board recess in August, and two highly visible customer programs slated to roll out in the September/October timeframe (e-bike lending and induction cooking

demonstrations). In order to apply a new visual identity to these programs and prepare key partners for an October soft launch of the new name and visual identity, we need to finalize the designs prior to a September board meeting. Therefore, staff will work with the ad hoc committees over the next several weeks and bring the visual identity back to the Board in September as an informational item.

Inclusion of New Communities: Expansion of Service to San Joaquin County Jurisdictions (i.e., the City of Lathrop)

Last Fall, at the [September 21st Board meeting](#), EBCE's Board voted unanimously to welcome the City of Stockton to our agency's Joint Powers Authority (JPA) and growing service area. Since that time, neighboring San Joaquin County jurisdictions have been similarly engaged with EBCE to explore potential JPA membership and future service area expansion.

On March 13, 2023, the [City of Lathrop invited EBCE staff to present](#) an informational item to the City Council about Community Choice Aggregation (CCA) generally, and EBCE membership specifically. Thereafter, the City's staff coordinated with EBCE to request its citywide electricity usage data from PG&E in anticipation of the Council's future interest in exploring EBCE membership/service more closely. EBCE has since received this data from PG&E.

At Lathrop's most recent City Council meeting (July 10, 2023), [City staff recommended the Council pass an Ordinance and Resolution](#) prospectively seeking EBCE membership and service area expansion. EBCE staff was invited to participate in this discussion and public comments were supportive of the City's EBCE membership consideration. The Council concluded by voting unanimously to approve the items presented and pursue EBCE membership before the end of the 2023 calendar year.

The next steps for Lathrop's EBCE membership consideration are as follows: **1)** The City completes a required second reading of its Ordinance to join EBCE (scheduled for the August 14, 2023, City Council meeting); **2)** EBCE's staff completes an internal, quantitative analysis evaluating the agency's ability to serve Lathrop's citywide electric load; **3)** EBCE's staff presents the results of the quantitative analysis to the Board with a recommendation regarding the City's membership request; **4)** EBCE's Board votes to include the City within its JPA and future service area; and **5)** EBCE submits an updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of the 2023 calendar year. If all these conditions are met, EBCE would prepare to begin serving Lathrop in early 2025, along with the City of Stockton's start of service. Please refer to the attached PPT re City of Lathrop's EBCE membership consideration.

New Staff

Christa Davis, Account Services Manager

Christa joined EBCE on 6/27/23 as the Manager of Account Services. Her essential duties and responsibilities include serving as EBCE's lead and subject matter expert for customer billing operations, including integration of programs, rate changes, and other efforts implemented in conjunction with PG&E.

Christa has more than 16 years of experience working in the utility industry. Prior to EBCE, she worked for PG&E as a Senior Information Systems Analyst who was responsible for Electronic Data Interchange (EDI) support. She also has experience in PG&E billing operations and customer care.

Christa holds a BS in Information Technology and is a Certified ScrumMaster (CSM) and Certified Scrum Product Owner (CSPO).

Pulak Dugar - Data and Analytics Intern

Pulak joined EBCE on 7/3/23 as an Intern as part of the Data and Analytics team. Pulak will be responsible for moving a forecasting model for customers' income levels into production, helping EBCE gain more complete data on their customers. He developed the model earlier this year along with three other students from the University of California at Berkeley with help from the Data and Analytics team, as part of Berkeley's Data Discovery program.

Pulak is currently pursuing a bachelor's degree in Computer Science at UC Berkeley.

CITY OF LATHROP, CA

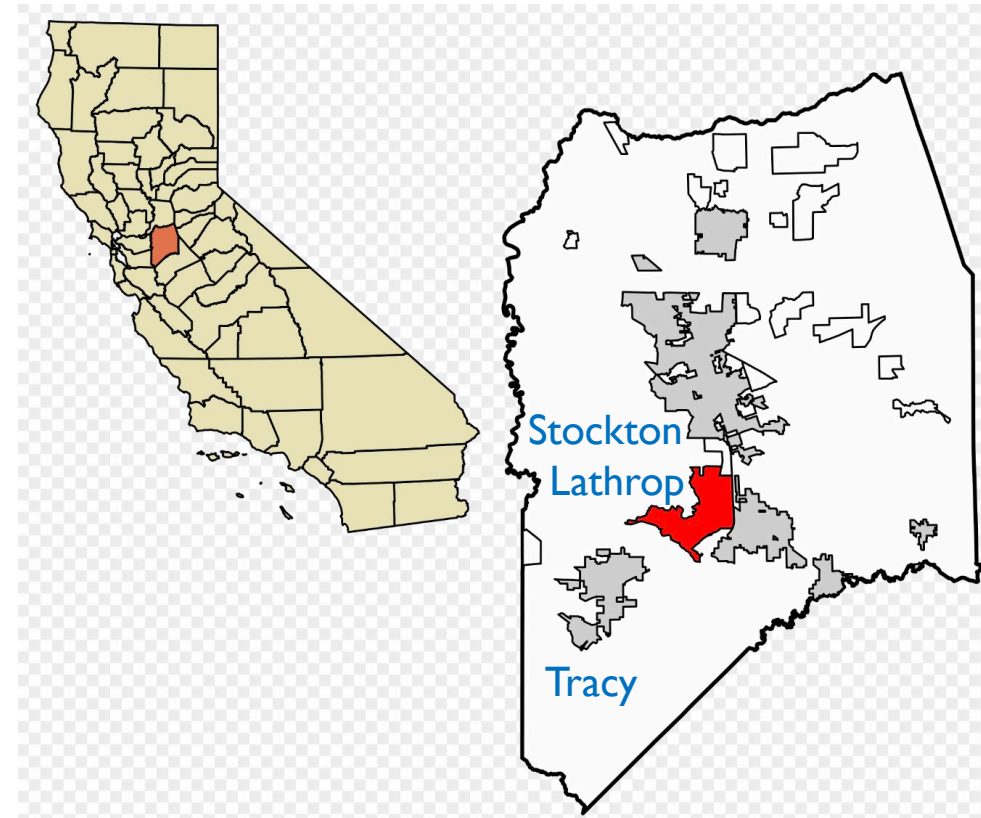


■ San Joaquin County: Located between Tracy and Stockton

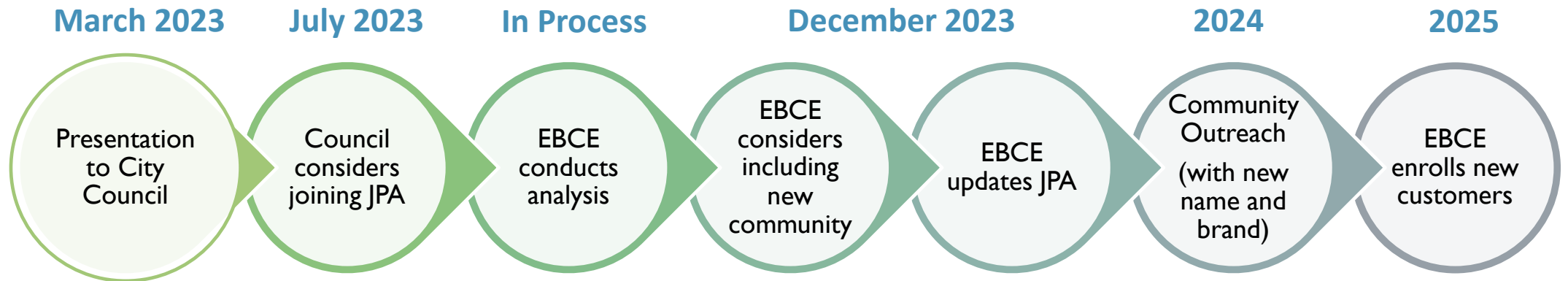
- Pop: 31,300 (2022)
- Incorporated: 1989
- Major transit intersection: Interstate 5, 205, and CA State Route 120
- Top three employers: Tesla, UPS, Army & Air Force Exchange Service

■ Energy-related opportunities

- Growing electricity load, particularly commercial & industrial sectors
- Interstate transit corridors for EV fast charging; light, medium, and heavy-duty fleets; and other transportation electrification projects
- Central location relative to agriculture, logistics, and shipping hubs
- 3rd fastest growing city in California (2021)



TIMELINE: LATHROP'S JPA MEMBERSHIP CONSIDERATION



Steps to Joining EBCE

1. Meetings with City staff/elected officials
2. 2-3 presentations to the City Council & Council considers joining JPA
3. EBCE staff conducts quantitative analysis
4. EBCE Board & Community Advisory Committee review analysis and Board considers including new community
5. If Board Approves, EBCE updates JPA and files amended Implementation Plan with the CPUC before 12/31/23

2024: Community outreach in new community

2025: EBCE enrolls customers in new community



CAC Report Item 12

TO: East Bay Community Energy Board of Directors

FROM: Anne Olivia Eldred, Chair - Community Advisory Committee, Director - Board of Directors

SUBJECT: CAC Report (Informational Item)

DATE: July 19, 2023

Recommendation

Accept Community Advisory Committee Chair's report on update items below.

Emissions

The CAC held a presentation regarding the intensity of greenhouse gas (GHG) emissions in EBCE/AVAs default product compared to other CCAs and PG&E in April.

EBCE emissions were significantly higher than other CCAs who demonstrated better overall performance than EBCE, with lower nuclear content, higher renewable and carbon free percentages, and/ or significantly better cost savings. Staff discussed and answered questions regarding the disparities. The 2025 goal of nearly 80% clean and the 2030 goal of 100% by 2030 is a good trajectory.

Questions from the CAC and the public demonstrate that a concise executive summary may help provide transparency for laypersons and those learning about electricity markets.

This item appeared on the board agenda and was held on each agenda since April and is not on this agenda. We look forward to the updated presentation with the 2022 numbers.

We request:

- data points included in the last presentation are included in the next one, and
- when staff anticipate presenting updated emissions intensity information.

Budget

Following the discussion at last month's board meeting, a concern was raised regarding the distribution of this year's on-bill credit from a transparency and equity perspective. Methodology should be discussed and decided by the Board.

Inclusion of New Communities: Expansion of Service to San Joaquin County Jurisdictions (i.e., the City of Lathrop)

The CAC requests a general discussion on EBCE/AVAs intentions around service territory expansion be added to a future meeting agenda.

Coordinating EBCE Local Development Actions

Jim Lutz, At-Large Member of the Community Advisory Committee

When Jim applied to the CAC, and was appointed by the Council of Mayors, he stated he would like to help work with cities to implement their climate action plans (CAPs). He is in the process of meeting with sustainability staff from member cities and the County of Alameda to better understand how EBCE/AVA is coordinating local development actions with the CAPs of member cities/counties.

He submitted and presented aggregate information from meetings held thus far from the majority of jurisdictions. The full report is attached.

Key Findings

- appreciation for EBCE/AVA. Specifically stating that staff are responsive, helpful and willing to share their expertise.
- Participating jurisdictions are diverse: population numbers, number of city staff, financial resources available.
 - Importance of timing budget cycles to city programs
 - Difficult to participate if they find out too late
- Diversity of climate adaptation ambitions and targeted actions
- Near universal desire for more collaborative planning process
 - starting city/county engagement earlier
 - specifically engage in program design, not adoption (with cities, not for them)
 - more dialogue and opportunity for feedback
 - earlier notification helps city staff anticipate deadlines and align funding requests with city budget timelines
- Desire for increased flexibility
 - Some Cities are excluded from participation due to inflexible design
 - Doesn't account for differences between cities
- Would like to see EBCE/AVAs process more like StopWaste.org
- Want more regional workforce development
- More focus on building decarbonization and less on vehicle electrification
- Spend resources achieving cleaner energy at lower rates

Recommendations

1. Direct staff to seek input from cities during early program selection and planning stages,
2. Design programs to allow a wider range of cities within EBCE/AVAs territory to participate
3. Prepare and regularly update a set of EBCE/AVAs goals with input from city staff to inform long-term direction and strategy, as well as programmatic work and budget development, and
4. Initiate a regular process to get independent feedback from city staff who deal with EBCE/AVA staff on a regular basis.

Attachments

- A. Coordinating EBCE Local Development Actions: City Staff Perspectives

Coordinating EBCE Local Development Actions: City Staff Perspectives

Jim Lutz
CAC at-large Member
July 17, 2023

City Climate Action Plans

All the cities in EBCE territory have Climate Action Plans (CAPs). Some of the cities are on their second or even third version of those plans.¹

When I applied to the CAC I indicated I would like to help EBCE work with the cities to implement their Climate Action plans. I thought it was important to review how EBCE is coordinating local development actions with the CAPs of the cities in Alameda County .

While many of the action items in the city CAPs deal with issues not directly related to energy, such as sea-level rise, solid waste management, wildfire prevention, etc, several of the common action items are directly related to programs EBCE is currently conducting or considering developing.

Some examples of action items common to many cities related that are related to current or future EBCE programs are:

- cleaner electricity²
- electrify municipal buildings
- electrify city fleets
- electrify private buildings
- electric private vehicles and promote active transportation
- develop local resiliency centers, (critical municipal facilities)

How is EBCE helping the cities?

The intent of this report is to improve coordination of EBCE local development programs with the staff of member cities who help implement these programs. This report is not intended to address how EBCE interacts with residents in its territory.

Although different EBCE programs were mentioned in these conversations, we did not discuss any of these programs in detail. I was trying to understand the perspectives and general experience of the city staff who work with EBCE to implement programs that support their cities CAPs.

Method

I had direct communication with city “sustainability” staff. That is I attempted to reach the staff at each city who are responsible for implementing the action items of their city’s CAP. The communications were loosely structured interviews. After introducing myself and what I was trying to do, I would ask about what their city was doing regarding the energy-related action items in their CAP. After that I would ask about which EBCE programs they were working with and their experiences with implementing those programs. I also asked about their interactions with EBCE in general. Finally I asked if they had any other recommendations or anything else they would like me to report back to EBCE. I let them know as a CAC member I had no direct control of EBCE actions.

1 When I refer to “city” in this report I mean not only the cities that make up EBCE, but the County of Alameda as well.

2 Many cities have adopted to default to EBCE’s Renewable 100 electricity, as one of their first climate action plans.

Over the course of the slightly more than a year and a half since I began this project I have spoken with the following people.

Matt Anderson (Emeryville), Megan Campbell (Pleasanton), Elizabeth Carrade (Albany), Karen Cook (Alameda County), Rachel DiFranco (Fremont), Soren Fajeau (Newark), Nicole Grucky (Hayward), Shayna Hirshfield-Gold (Oakland), Nancy Humphrey (Emeryville), Rebecca Miliken (Berkeley), Hoi-Fei Mok (San Leandro), Erik Pearson (Hayward), Billi Romain (Berkeley), Jim Scanlin (Newark), Jeffrey Wong (Oakland), and Shannan Young (Dublin)

I would like to thank all of them for their time and the thoughtfulness of the discussions we had.

Of the 16 member cities of EBCE, the only ones I have not yet spoken with staff are Piedmont, Tracy, Union City, Livermore and Stockton.

Key Findings

All the city staff I spoke with appreciate EBCE. Many of them specifically stated that EBCE staff are responsive, helpful and willing to share their expertise. I heard several versions of “staff at EBCE are impressive”. While comparing working with EBCE instead of PG&E one person I spoke with said “getting a concussion is better than working with PG&E”. Another said they were “thrilled to have EBCE as a partner”.

In these conversations it was clear that the EBCE cities are very diverse. This diversity includes the range of population size and number of city staff. The financial resources available to the cities varies even more than population size varies. One budget related finding that stood out for me is the importance of the timing of budget cycles to city programs. Given the lead times for cities to adopt a budget, it can be difficult for staff to include an EBCE program if they find out about it too late.

The cities’ CAPs had a wide range of climate adaptation ambitions and targeted actions. Some of this has to do with the age of existing building stock within the city and of the income levels of their residents. Some of this range is also due to political history and character of the different cities.

The city staff I spoke with participate in the monthly Municipal Alliance (MuniPALs) meetings. These are monthly meetings, hosted by EBCE with staff from cities working to implement EBCE programs. This is where most of them find out about EBCE programs their cities could participate in.

Reported Shortcomings

One theme that I heard from nearly every city was the desire for a more collaborative planning process. Comments on this included:

- “big picture aligns, but actual roll-outs not co-designed”
- “sometimes not enough emphasis on working with cities to design programs”
- “EBCE doesn’t get enough input from cities early enough in design stage. Instead of creating programs with cities, are creating programs for cities”
- “meetings with EBCE are more of a download, would like a more open dialogue”
- “EBCE speed so fast cities feeling not quite listened to”
- “nice to have EBCE, would be better for more early collaboration”
- “some programs caught us by surprise, no chance for feedback”
- “hear about programs after they are fully baked”
- “more of a 1 way reporting out to cities”

“programs have been presented as take it or leave it.

Another common theme was EBCE programs are not as flexible as cities would like to see. This lack of program flexibility can unintentionally exclude some cities. Some comments I heard mentioning this included: “EBCE doesn't account for all the discrepancies between different municipalities”, “cities are different, [a program] doesn't work with every city”, “program offerings can be out of step with cities”, and “still kinks to work out to get services”.

Another repeated request was for a longer term perspective on what EBCE is planning for the next few years. One staffer asked what is the 5 year plan? Sustainability managers don't always have good connections to mayors and other city departments. Earlier notice about upcoming programs could help the staff anticipate deadlines which would allow them to align funding requests with city budget timelines.

Several staff commented they would like to see EBCE operate more like StopWaste.org. They felt StopWaste was better at involving cities in developing programs. The StopWaste programs were also designed with enough flexibility to be adopted by most cities.

Other issues that were brought up included: not seeing enough regional workforce development; would like more effort focused on building decarbonization and not so much on vehicle electrification; and a request to spend resources achieving cleaner electricity at cheaper rates.

A few of the city staff I spoke said they appreciated I was asking about their working relations with EBCE.

Recommendations

After these discussions I recommend the following for EBCE:

1. Direct staff to seek input from cities during early program selection and planning stages,
2. Design programs to allow a wider range cities within EBCE territories to participate,
3. Prepare, and regularly, update a set of EBCE goals with input from city staff to inform long-term direction and strategy, as well as programmatic work and budget development, and
4. Initiate a regular process to get independent feedback from city staff who deal with EBCE on a regular basis.



Staff Report Item 13

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer
SUBJECT: Approve Energy Prepay Transaction #3
DATE: July 19, 2023

Recommendation

Adopt a Resolution authorizing the execution of a Power Supply Contract and certain other documents to enable EBCE to enter into its third energy prepayment transaction.

Background and Discussion

EBCE is preparing to execute a third energy prepay transaction. EBCE has a sizeable energy procurement portfolio needed to serve our load and expects to execute multiple prepay transactions over the next several years to realize procurement savings by utilizing its tax-exempt status. This third transaction is largely a replication of the prior two transactions but with some added settlement efficiencies, moving from monthly settlements to an annual settlement process. With this unique change, EBCE will continue to settle on a monthly basis and realize monthly savings, but will have an annual true-up mechanism. This better aligns with the variable as delivered nature of our renewable energy PPAs. EBCE plans to have documentation prepared for the July Regular Board meeting to seek board approval to move forward and go to market soon after. The actual issuance of bonds and closing of the transaction will be dependent on market conditions and the necessary interest rate spreads.

Previous Energy Prepay Transactions:

EBCE executed two energy prepay transactions in 2021 and 2022, issuing through CA Community Choice Financing Authority (CCCFA), the JPA in which EBCE is a member. The annual savings from these first two energy prepay transactions totals nearly \$7 Million at the outset.

EBCE and Silicon Valley Clean Energy (SVCE) jointly executed the first energy prepay transaction by a CCA on September 23, 2021, with a notional size of \$1.48BN. For this first transaction, EBCE and SVCE jointly performed due diligence and negotiated the initial transaction over a 1.5yr period and issued a number of solicitations to select a number of counterparties and advisors. Included was a solicitation in November 2019 to identify potential Prepay Suppliers, through which Morgan Stanley (MS) was selected. MS is one of a small number of large financial institutions that is experienced in executing on the bond underwriting and prepay structuring aspects of this transaction. Additionally, the CCAs jointly issued a solicitation in June 2020, for the counsel roles, through which Orrick, Herrington &

Sutcliffe and Chapman & Cutler LLP were selected. Both firms have significant experience representing parties on prepay transactions since the market inception in the 1990s, and both firms are industry leaders in serving the roles for which they've been selected. The CCAs also jointly issued a solicitation in September 2020, to identify municipal financial advisors. Given the niche market for prepayments, there are very few firms who provide this type of advisory service and experience. EBCE and SVCE reviewed and scored the respondents, ultimately selecting PFM Financial Advisors, LLC & PFM Swap Advisors LLC (PFM). Moody's Investor Service Inc. was selected due to their unique experience in rating prepayment type transactions and alternative rating agencies are not as suitable to complete such work.

Due to the nature of the repeat work of these transactions, EBCE has been successful in reducing the costs of working with these various parties, saving over \$150,000 compared to initial contract costs. Additionally, the execution and transaction closing process has seen considerable efficiencies.

Prepay Parties:

The prepay transaction requires the selection and involvement of multiple parties. Names and functions are as follows:

Prepay Buyer: East Bay Community Energy

- Role: Provide energy contracts to flow through prepay

Prepay Supplier and Bond Underwriter: Morgan Stanley

- Role: Structure transaction, underwrite bonds, and pay contract price to PPA provider
- Selection Process: via solicitation issued by EBCE in November 2019

Municipal Advisor: PFM

- Role: Advise Prepay Buyer in negotiations; required by Municipal Securities Rulemaking Board (MSRB)
- Selection Process: via solicitation issued by EBCE in September 2020

Bond Counsel: Orrick, Herrington & Sutcliffe

- Role: Represent bondholders
- Selection Process: via solicitation issued by EBCE in June 2020

Tax Counsel: Orrick, Herrington & Sutcliffe

- Role: Provide tax opinion on transaction
- Selection Process: via solicitation issued by EBCE in June 2020

Issuer's Counsel (also known as Prepay Counsel or Prepaid Counsel): Chapman & Cutler LLP

- Role: Represent issuer's interests, supporting drafting and negotiating terms of prepay agreement and associated energy supply agreements
- Selection Process: via solicitation issued by EBCE in June 2020

Disclosure Counsel: Chapman & Cutler LLP

- Role: Prepare Official Statement / Prospectus
- Selection Process: via solicitation issued by EBCE in June 2020

Bond Issuer: California Community Choice Financing Authority (CCCFA)

- Role: Issue municipal bonds for prepay
- Note: EBCE is a JPA member to this agency, which was formed in 2021

Custodian: Bank of New York

- Role: Manage the various Payment Accounts
- Selection Process: via solicitation issued in July 2021

Commodity Swap Counterparty: Natixis

- Role: Provide commodity swap for any periods with floating/indexed power prices

- Selection Process: via competitive bid for each prepay transaction. The swap counterparty is the one role that has been served by different providers.

Credit Rating Agency: Moody's

- Role: Rate the bonds
- Selection Process: based on an evaluation of the limited providers in the market and chosen due to accepted market standards

Prepay Documents:

The prepay transaction requires the preparation of numerous documents. Below are the key documents (all included as attachments to this item):

Power Supply Contract

- Function: Sets forth terms for which CCA receives energy for 30-year term
- Signed by: EBCE and Issuer (CCCFA)

Prepaid Agreement

- Function: Details the flow of power and payments between the Prepay Supplier and the Issuer
- Signed by: Issuer (CCCFA) and Prepay Supplier (Morgan Stanley)

Letter Agreement Regarding PPA Assignments

- Function: Details the terms of the limited assignment of PPAs between EBCE and third-party energy sellers
- Signed by: EBCE and Prepay Supplier (Morgan Stanley)

Form of Limited Assignment

- Function: Signed for each PPA assigned into prepay; Exhibit to "Letter Agreement Regarding PPA Assignments"
- Signed by: EBCE, Original PPA Counterparty, and Prepay Supplier (Morgan Stanley)

Project Administration Agreement

- Function: Sets out terms for CCA to act on behalf of the Issuer
- Signed by: EBCE and Issuer (CCCFA)

PPA Payments Custodial Agreement

- Function: Details cash flows between PPA Buyer (CCA), Prepay Supplier, and Custodian
- Signed by: EBCE, Prepay Supplier (Morgan Stanley), and custodian

Trust Indenture

- Function: Sets forth terms of bond issuance and rights of bondholders
- Signed by: Issuer (CCCFA) and trustee (BONY)

Re-pricing Agreement

- Function: Sets forth terms for remarketing and repricing for future bond repricing periods
- Signed by: Issuer (CCCFA) and Prepay Supplier (Morgan Stanley)

Preliminary Offering Statement (POS)

- Function: Details parties (including appendix of info on CCA operational history), transaction size and key terms; used to market the bonds

- Signed by: *Not a signed document*

Cost Share Memorandum of Understanding (MOU)

- Function: Details the cost share arrangement with MS to cover rating agency and green bond designation fees and EBCE responsibility to cover costs in place of CCCFA

Prepay Structure Overview:

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. Utilizing the municipal bond market, a tax-exempt Load Serving Entity (LSE, also called "Prepay Buyer") and a taxable financial counterparty (bank, called "Prepay Supplier") enter into a 30-year agreement through which the LSE assigns existing power supply contracts to the Prepay Supplier. The Prepay Supplier pays the contract price to the PPA provider, while the LSE pays the Prepay Supplier at a discounted rate. The discounted rate is agreed upon in the prepay documents for the initial term of the bond and is based in part on the spread between the taxable and tax-exempt bond interest rates. The market availability of this interest rate spread is critical to the savings opportunity available to an LSE through a prepay. At future bond repricing periods, this discount rate will be reset, with a negotiated minimum discount rate.

Tax-exempt bonds are issued by a third-party conduit to raise funds for the prepay transaction, which flow to the Prepay Supplier. The LSE does a limited assignment of the PPA to the Prepay Supplier. The LSE is required to continue to perform under the contract, while maintaining rights to the electricity and attributes under the PPA. The Prepay Supplier utilizes the bond funds and provides a discount on the PPA to the LSE based on the spread between the taxable and tax-exempt rates. The discount is estimated at 8-12% but is subject to change based on market conditions. For this prepay, the initial discount target is 10% and the minimum discount will likely be set around 6-7%. The typical bond tenors are in the 7-10 year range, so there will be a reissuance and reset of the discount several times throughout the life of the 30-year prepay. There is a negotiated minimum discount over the life of the transaction that, if not met by the Prepay Supplier, allows the LSE a walkaway right.

The total combined present notional value of the assigned contracts flowing through the prepay over the 30 years is anticipated to be in the range of \$500MM-1BN; these contracts can be long-term renewables PPAs or short-term commodity supply contracts. While the contracts are assigned to the Prepay Supplier, the LSE continues to ultimately take and pay for all the energy and attributes delivered through the contract; all other terms of the PPA remain unchanged. If the prepay program terminates early for any reason - either the Prepay Supplier or the LSE fail to perform - the LSE forgoes future savings and the assigned PPA is put back completely to the LSE.

Two key features of the municipal bonds utilized in a prepay greatly reduce risk to the LSE. First, the bonds are non-recourse to the LSE, meaning they are neither secured nor guaranteed by the LSE and EBCE will at no point be responsible for repaying the bonds. Secondly, prepays are off-balance sheet for the LSE as the bonds are issued by a third-party conduit.

Ultimately, prepays are employed to save ratepayers money while maintaining both (a) the economics for the PPA provider and (b) the terms of the energy supply contract. They have

been used for natural gas transactions in the US since the early 1990s, with over 90 transactions completed nationwide (\$50+ Billion) and 15 transactions completed in California. The same tax law¹ and similar transaction structure that enables the natural gas prepays enables the program for electricity, and specifically renewables contracts, creating an opportunity for CCAs to provide renewable energy at a lower cost than the IOU competition.

Financial Impacts

The purpose of pursuing the prepay transaction is to achieve meaningful energy procurement cost savings. This transaction is targeting a 10% discount at the outset, which translates to \$2-3MM of annual savings.

The majority of fees paid to various parties involved in the prepay will be payable from the proceeds of the prepay bonds. That is to say, there is limited out-of-pocket cost to EBCE; the cost will be paid out of the savings realized from the prepay transaction. With that said there are a portion of fees, such as certain counsel fees, rating agency fees, and green bond designation fees that are not contingent. We have negotiated to have MS split these costs with EBCE if the deal does not close. Additionally, we will only move forward in authorizing these fees when necessary.

Additionally, it is important to note that the prepay is non-recourse to EBCE. The ultimate counterparty with the Prepay Supplier is the CCCFA JPA, so CCCFA is therefore the counterparty to all the underlying agreements. CCCFA is 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.

Details of Requested Board Approval

Adopt the Resolution which authorizes EBCE to sign:

- Power Supply Contract with CCCFA (Issuer)
- Letter Agreement Regarding PPA Assignments with Morgan Stanley (Prepay Supplier) with Form of Limited Assignment Agreements with Morgan Stanley (Prepay Supplier) and future PPA sellers
- Project Administration Agreement with CCCFA (Issuer)
- PPA Payments Custodial Agreement with Morgan Stanley and BONY
- Cost Share Memorandum of Understanding (MOU), by and between EBCE, MS, and CCCFA; and

The approvals provided shall be subject to the following parameters:

- (a) the Bonds will not be obligations of EBCE, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by EBCE under the Power Supply Contract;
- (b) the aggregate principal amount of the Bonds shall not exceed \$1,000,000,000
- (c) the annual energy savings to EBCE under the Power Supply Contract shall be at least \$4.50 per MWh

¹ 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).

Attachments

- A. Resolution
- B. Presentation
- C. Power Supply Contract
- D. Letter Agreement Regarding PPA Assignments with Form of Limited Assignment
- E. Project Administration Agreement
- F. PPA Payments Custodial Agreement
- G. Trust Indenture
- H. Prepaid Agreement
- I. Re-pricing Agreement
- J. Preliminary Offering Statement
- K. Cost Share MOU

RESOLUTION 2023-[]

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A POWER SUPPLY CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS, SERIES 2023 EBCE; AND CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, The East Bay Community Energy Authority (“*EBCE*”) was formed as a community choice aggregation agency (“*CCA*”) on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.* (the “*Act*”), 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 Joint Powers Agreement (as defined below) in March of 2020;

WHEREAS, pursuant to the provisions of the Act, EBCE and certain other California “community choice aggregators” entered into a joint powers agreement (the “*Joint Powers Agreement*”) pursuant to which the California Community Choice Financing Authority (the “*Issuer*”) was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist EBCE in financing the acquisition of supplies of clean energy;

WHEREAS, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy by any means and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

WHEREAS, EBCE has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer;

WHEREAS, EBCE is requesting that the Issuer agree to purchase certain quantities of clean energy from Morgan Stanley Energy Structuring, L.L.C., a Delaware limited liability company (the “*Prepaid Supplier*”) on a prepaid basis (the “*Project*”) and to sell such clean energy to EBCE, as described herein;

WHEREAS, EBCE is requesting that the Issuer finance the costs of the Project with the proceeds of its Clean Energy Project Revenue Bonds, Series 2023 EBCE (the “*Bonds*”);

WHEREAS, EBCE has determined to authorize the officers of EBCE to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

WHEREAS, there have been made available to the Board of Directors of EBCE for approval forms of the following agreements to which EBCE is a party (collectively, the “*EBCE Documents*”):

1. Power Supply Contract between EBCE and the Issuer;
2. Custodial Agreement by and among EBCE, Morgan Stanley Capital Group Inc., a Delaware corporation (“*MSCG*”), the Prepaid Supplier, the Issuer and the custodian to be named therein;
3. Letter Agreement among EBCE, the Prepaid Supplier and *MSCG* regarding matters relating to Assignment Agreements with Form of Limited Assignment Agreement, by and among EBCE, the counterparty to the power purchase agreement described therein, and *MSCG*; and
4. Prepaid Energy Project Administration Agreement, by and between EBCE and the Issuer; and
6. Cost Share Memorandum of Understanding (MOU), by and between EBCE, MS, and CCCFA; and

WHEREAS, there have also been made available to the Board of Directors of EBCE forms of the following additional documents relating to the Project:

1. Trust Indenture (the “*Indenture*”) between the Issuer and the trustee to be named therein, providing for, among other things, the issuance of and security for the Bonds;
2. Prepaid Energy Sales Agreement (the “*Prepaid Agreement*”) between the Issuer and the Prepaid Supplier, providing for the delivery of the prepaid energy supply to the Issuer;
3. Re-pricing Agreement (the “*Re-pricing Agreement*”) between the Issuer and the Prepaid Supplier providing for the remarketing or refunding of the Bonds from time to time and the establishment of the Monthly Discount available to EBCE under the Power Supply Agreement from time to time during the term of the transaction; and
4. Preliminary Official Statement (the “*Preliminary Official Statement*”), to be used in connection with the offering and sale of the Bonds, including the information relating to EBCE included in Appendix A thereto (the Indenture, the Prepaid Agreement, the Re-pricing Agreement and the Preliminary Official Statement, together with the EBCE Documents, the “*Project Documents*”);

NOW THEREFORE, BE IT RESOLVED by the EBCE Board of Directors, as follows:

Section 1. The proposed forms of the EBCE Documents, as made available to the Board of Directors for this meeting, are hereby approved. The form of Limited Assignment Agreement may be used, in substantially the same form, for the initial assignments of EBCE power purchase agreements, and in a similar form for additional power purchase agreements as needed to maintain the transactions approved hereby, with such changes as may be necessary to conform to the requirements of such power purchase agreement or as may be necessary to effect such assignment, and any such Limited Assignment Agreements shall be included in the EBCE Documents hereby approved. Subject to the parameters set forth in Section 4 of this Resolution, any of the Chief Executive Officer, Chief Operations Officer or Chair of the Board (each an “*Authorized Officer*”) is hereby authorized and directed, for and on behalf of EBCE, to execute and deliver the EBCE Documents in substantially said form, with such changes and insertions therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The proposed form of the Preliminary Official Statement, as made available to the Board of Directors for this meeting, is hereby approved. Any Authorized Officer is hereby authorized and directed, for and on behalf of EBCE, to execute and deliver a certificate as to the information regarding EBCE contained therein and in the final version of the Official Statement, with such changes and insertions therein as the Authorized Officer approving the same may deem necessary or appropriate. Subject to approval by the Issuer, EBCE hereby authorizes the distribution of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds, and the delivery of the Official Statement in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

Section 3. Each Authorized Officer is hereby authorized and directed, for and in the name and on behalf of EBCE, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in the discretion of such Authorized Officers, to effectuate the actions which EBCE has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by EBCE the transactions contemplated by the EBCE Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 4. The approvals provided for herein shall be subject to the following parameters:

- (a) the Bonds will not be obligations of EBCE, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by EBCE under the Power Supply Contract;

(b) the aggregate principal amount of the Bonds shall not exceed \$1,000,000,000; and

(c) the annual energy savings to EBCE under the Power Supply Contract shall be at least \$4.50 per MWh.

Section 5. Execution and delivery of the EBCE Documents by an Authorized Officer or Officers shall be conclusive evidence that the parameters set forth in Section 4 have been met, and all actions heretofore taken by the Authorized Officers with respect to the issuance of the Bonds are hereby ratified, confirmed and approved.

Section 6. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to professionals that provided services to EBCE in connection with the Project. These professional services include legal counsel, bond counsel, tax counsel, Municipal Financial Advisor, Swap Advisor, and any other consultant needed to complete the transactions contemplated herein for EBCE. Payment to these professionals will be made from the proceeds of the sale of the Bonds and pursuant to the terms of the applicable agreement executed with EBCE.

Section 7. If the conditions set forth in Section 4 have been met, an Authorized Officer may direct the payment to additional vendors and/or parties to the EBCE Documents or other Project Documents to complete the issuance of the Bonds. These vendors, if any, will be paid pursuant to an agreement for services rendered in completing the issuance of the Bonds and from the proceeds of the sale of the Bonds.

Section 8. This Resolution shall take effect immediately.

ADOPTED AND APPROVED at a regular meeting of the EBCE Board of Directors on this [____] day of [____], 2023

Elisa Marquez, Chair

Attest:

Adrian Bankhead, Clerk of the Board

JULY 19, 2023

Approve Energy Prepay Transaction #3



EBCE Energy Prepay Overview

Attachment Staff Report Item 13B

- EBCE executed two energy prepay transactions in 2021 and 2022, issuing through CA Community Choice Financing Authority (CCCFA), the JPA in which EBCE is a member
- Annual savings from these first two energy prepay transactions totals nearly \$7 Million at the outset
- Energy Prepay transactions are off balance sheet structures that allow EBCE to utilize its tax-exempt status to lower its energy procurement costs
- The discount that is applied to energy costs is based on the differential between taxable and tax-exempt dept spreads. These spreads are historically volatile and therefore optimal prepay timing is difficult to predict
- EBCE is preparing a third energy prepay transaction and seeking approval from the board to move forward with the transaction as early as market conditions allow following the July board meeting

Energy Prepay Introduction

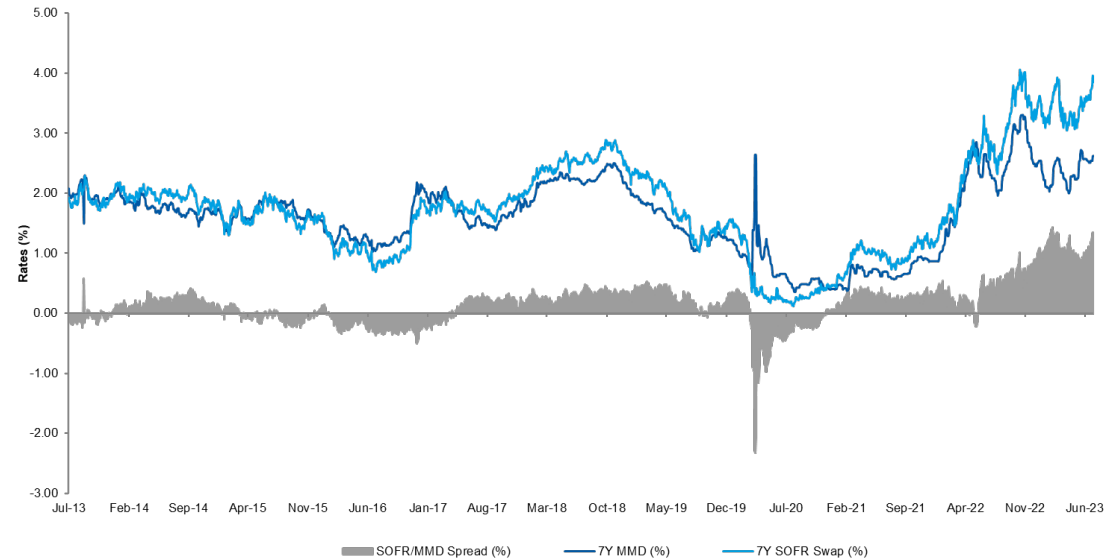
- An energy prepayment is a long-term non-recourse financial transaction between a tax-exempt Load Serving Entity (LSE) and a taxable financial counterparty (bank, called “Prepay Supplier”) utilizing the municipal bond market.
 - Typically 30-year term, LSE committing ~\$500MM-\$1BN of energy supply contracts (combined notional values)
 - LSE utilizes in order to lower customer energy costs
- Prepay Supplier is assigned an existing energy supply contract, pays the contract price to PPA Seller and immediately transfers all electricity and attributes to LSE. LSE pays the Prepay Supplier at a discounted rate.
- 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 1990’s, the IRS issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327)

- Conditions are suitable for prepays when the taxable and tax-exempt spreads are wide
- Spreads have been volatile in recent years with relatively stable and improving conditions over the last year
- There are a total of 8 outstanding energy prepay deals across 5 CCAs with 2 additional prepays actively preparing to go out to market – one by EBCE and one by CCCE

10-Year Lookback | 7Y Tenor SOFR/MMD Dashboard

Interest Rate Dynamics a Key Driver of Prepayment Discount

7Y SOFR Swap and 7Y MMD Comparison



Source: Bloomberg, Morgan Stanley Matrix

Existing Energy Prepay Transaction Summary

EBCE First Transaction – Jointly executed with SVCE

- First Energy prepay closed by a CCA
- Closed: Sept. 23, 2021
- Total Bond Proceeds: \$1.48 Billion ("Green Bond" Certified)
- Initial Power Supply: 59 MW Around-the-Clock Carbon-Free Energy starting Jan 1, 2022
- Initial Bond Tenor Savings: 10 years

EBCE Second Transaction - Standalone prepay

- Third Energy prepay closed by a CCA
- Closed: July 12, 2022
- Total Bond Proceeds: \$939 Million ("Green Bond" Certified)
- Initial Power Supply: 75 MW Around-the-Clock Carbon-Free Energy starting April 1, 2023
- Initial Bond Tenor: 6 years

Prepay Parties

Prepay Supplier/Bond Underwriter: Morgan Stanley

- Selected through solicitation issued November 2019

Municipal Financial Advisor: PFM Financial Advisors LLC & PFM Swap Advisors LLC

- Selected through solicitation issued September 2020

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

- Both firms selected through solicitation issued June 2020

Bond Issuer: California Community Choice Financing Authority

EBCE membership approved by Board in April 2021, JPA formed June 2021; Founding Members are EBCE, MCE, SVCE, 3CE

Custodian: Bank of New York

- PFM issued solicitation early July 2021

Commodity Swap Counterparty: Natixis

- Natixis was the swap counterparty in 2022

Credit Rating Agency: Moody's Investor Service Inc

Documents Overview: EBCE Signs Attachment Staff Report Item 13B

- 1. Power Supply Contract**
 - Sets forth terms for which CCA receives energy for 30-year term
 - Signed by EBCE and CCCFA
- 2. Letter Agreement Regarding PPA Assignments**
 - Details the terms of the limited assignment of PPAs between EBCE and 3rd party energy sellers
 - Signed by EBCE and Morgan Stanley (Prepay Supplier)
- 3. Form of Limited Assignment**
 - Details the terms of the limited assignment of each energy PPA EBCE assigns into prepay
 - Signed by EBCE, the original PPA counterparty, and Morgan Stanley (Prepay Supplier)
- 4. Project Administration Agreement**
 - Sets out terms for CCA to act on behalf of the Issuer
 - Signed by EBCE and CCCFA
- 5. PPA Payments Custodial Agreement**
 - Details cash flows between PPA Buyer (CCA), Prepay Supplier, and Custodian
 - Signed by EBCE, Morgan Stanley, and BONY
- 6. Cost Share Memorandum of Understanding (MOU)**
 - Details the cost share arrangement with MS to cover rating agency and green bond designation fees and EBCE responsibility to cover costs in place of CCCFA

Documents Overview: CCCFA Signs

Attachment Staff Report Item 13B

1. **Prepaid Agreement**
 - Details the flow of power and payments between the Prepay Supplier and the Issuer (CCCFA)
 - Terms are largely mirrored in the Power Supply Contract
2. **Re-pricing Agreement**
 - Sets forth terms for remarketing and repricing for future bond repricing periods
3. **Trust Indenture**
 - Sets forth terms of bond issuance and rights of bondholders
 - Details that all revenues relevant to transaction flow to and through conduit issuer (CCCFA)
4. **Commodity Swap documents**
 - Docs pursuant to which the commodity price is hedged with a 3rd-party swap counterparty (to insulate transaction from market variations)
5. **Parent Guarantee**
 - Guarantee of “due and punctual payment” from Prepay Supplier to conduit issuer (CCCFA)
 - Flows in favor of conduit issuer and swap counterparty, respectively
6. **Front-End Custodial Agreement**
 - Outlines payment flows through the transaction, signed by CCCFA, Custodian, and Bond Trustee
 - *Also a Back-End Custodial Agreement which is signed by Morgan Stanley, Custodian, and Bond Trustee*

1. Preliminary Offering Statement (POS)
 - Official offering document used to market the bonds
 - Details parties (including appendix of info on EBCEs operational history), transaction size and key terms
 - Not a signed document

Details of Pending Board Approval Request

Adopt the Resolution which authorizes EBCE to sign:

- Power Supply Contract with CCCFA (Issuer)
- Letter Agreement Regarding PPA Assignments with Morgan Stanley (Prepay Supplier) with Form of Limited Assignment Agreements with Morgan Stanley (Prepay Supplier) and future PPA sellers
- Project Administration Agreement with CCCFA (Issuer)
- PPA Payments Custodial Agreement with Morgan Stanley and BONY
- Cost Share Memorandum of Understanding (MOU), by and between EBCE, MS, and CCCFA; and

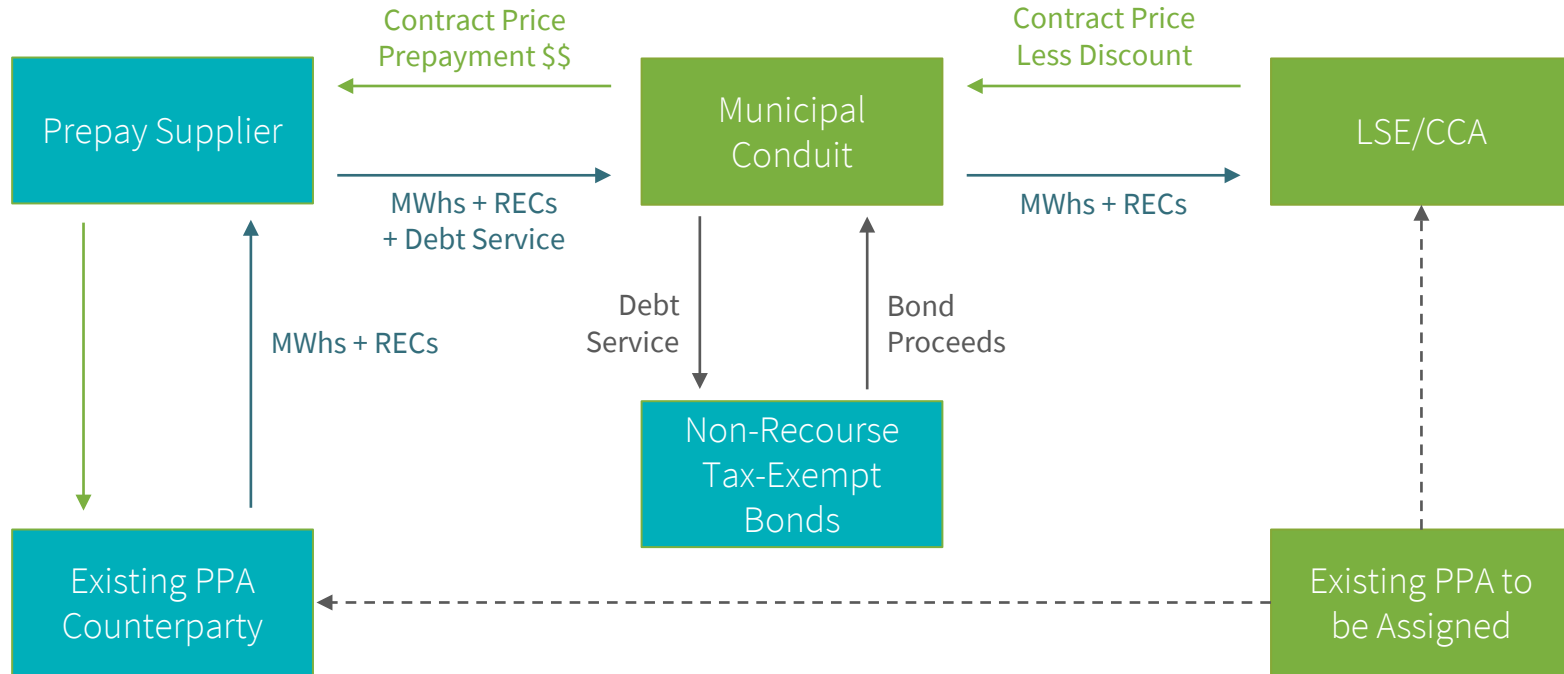
The approvals provided shall be subject to the following parameters:

- (a) the Bonds will not be obligations of EBCE, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by EBCE under the Power Supply Contract;
- (b) the aggregate principal amount of the Bonds shall not exceed \$1,000,000,000
- (c) the annual energy savings to EBCE under the Power Supply Contract shall be at least \$4.50 per MWh

Appendix



Prepay Structure



- Nationwide: 90+ municipal transactions
 - \$50+ Billion combined notional contract value
- California: 11 municipal transactions
 - \$5.7 Billion combined notional contract value
- Active Suppliers: Morgan Stanley, Goldman Sachs, JP Morgan, 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.

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, prepaid 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
- Active Suppliers: Goldman Sachs, Morgan Stanley, JP Morgan Royal Bank of Canada, Citi, Bank of America are all investment grade rated financial institutions

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 (i.e. the bank receiving the prepayment). 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 and arranged by the Prepay Supplier

Prepay Sizing and Discount

- The total bond proceeds may be as high as \$1.25bn and will be dependent on the CA bond market appetite.
 - EBCE will seek the maximum bond raise while maintaining optimal bond rates
 - The amount represents the present value of the PPA cashflows over the 30-year life of the transaction
- This transaction will likely translate to an estimated \$2-3MM of annual savings for EBCE for the initial bond term.
 - The transaction assumes an increase in the cashflows running through the prepay over the 30-year life.
 - As the transaction moves forward, the arbitrage value goes down since the present value benefits reduce with a shorter remaining tenor. The future discount rates will be reset every 5-10 years based on bond tenors and be dependent on future bond market conditions, but this puts downward pressure on the future discounts.
 - There is a negotiated minimum discount that, if not met by the Prepay Supplier, allows the LSE not to move forward in the repricing.
- Ultimately the discount is established by the spread between taxable and tax-exempt rates and deducts all transaction related costs, which include fees associated with bond underwriting, counsel (bond, disclosure, underwriter's, prepay), financial adviser, swap counterparty, credit rating, custodian, etc.
- 5-10 years is typically the optimal bond spread tenor. Maintaining this spread over a 30-year transaction life maximizes the available discount. This requires a repricing and re-issuance of bonds every 5-10 years and a reset of the discount rate. In general, a high interest rate environment will lead to a higher discount.
- The initial power flows for the transaction are anticipated to begin in 2024

- If this transaction does not materialize: Loss of out-of-pocket costs and staff time
 - Consultants are primarily contingent on successful deal, with the exception of certain rating agency and green bond designation fees
 - Consultants are primarily paid from deal proceeds vs. EBCE directly
- Opportunity cost of higher savings through a prepay transaction or alternative structure initiated at a different time.
 - To the extent that MS does not provide the minimum discount EBCE will have a right not to proceed in future repricing periods. Minimum discount will likely be set at around 6-7%. Target initial discount is 10%.
 - EBCE also has a right to shop the prepay provider if we view that the offered discounts are not at market
- Load loss or inability to assign a PPA into the prepay due to contractual limitations would likely lead to remediation or remarketing activities and potentially result in the loss of the discount.
 - Note that costs would not increase above contractual levels
- Regulatory risks, such as reclassifying a long-term PPA as a short-term PPA making it ineligible for SB350 qualification or disruption to PCC1 bundled classification due to the assignment of PPA
- Political risk associated with a transaction collapsing due to non-compliance to tax codes



Staff Report Item 14

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel

SUBJECT: Chief Executive Officer - Amended and Restated Employment Agreement

DATE: July 19, 2023

Recommendation

Approve Resolution authorizing the Board Chair, Director Marquez, to sign the attached Amended and Restated Employment Agreement (“Agreement”) with Nicholas Chaset, Chief Executive Officer.

Background and Discussion

EBCE hired Nicholas Chaset in 2017 in the role of Chief Employment Officer. Since that time, his Employment Agreement has been amended multiples times to adjust his salary and terms of employment, as well as to make minor clean-up changes. The original Agreement was set to expire effective July 1, 2023.

Negotiations with CEO Chaset with respect to his employment agreement have been underway since late 2022. The Board’s designated labor negotiators (Chair Marquez and Vice Chair Balch) and CEO Chaset have agreed to a one year extension of the Employment Agreement, incorporated changes to salary and benefits.

Due to the number of amendments that have been made to the agreement since CEO Chaset was retained (there have been six amendments to date), General Counsel opted to frame the Agreement as an “Amended and Restated” in order to avoid having to reference multiple amendments to understand the contract terms; however, the changes made to the agreement since the last amendment are primarily to sections 5 through 6 of the agreement. In addition, the recitals were updated to reflect the history of the Agreement.

A redline showing the proposed changes against the 6th Amendment are attached (the reader should keep in mind that the form of agreement has changed since this is presented as an “Amended and Restated” agreement).

The proposed changes to the contract are as follows:

- **Recitals.** Recitals to the Agreement were revised to reflect the updated Agreement.
- **Term.** The term of the Agreement is being extended to July 1, 2024, adding one year to the Agreement’s previous term which ended July 1, 2023.
- **Salary.** Effective July 1, 2023, the CEO’s salary shall be \$459,000 per year.
- **Bonuses.**
 - **One time bonus.** The CEO will receive a 10% bonus effective upon the same date.
 - **Long term performance bonus.** Effective in Fiscal Year 23/24, CEO will be eligible for a long-term performance bonus of up to 15% of his base salary based on the results of the annual performance view, which is anticipated to be completed by June 2024. This bonus will be paid over three years contingent with the CEO retaining his position with EBCE.
- **Performance evaluation.** The Board of Directors intends to conduct a performance evaluation of CEO around June 2024 and annually thereafter, before or around the start of each new fiscal year.
- **Retention bonus.** The retention bonus previously provided for in 2022 has been fully paid, so that provision was removed from the Agreement.

No further changes were made to the Employment Agreement as it was last amended in 2022. Except as provided above, CEO Chaset’s benefits remain the same under the proposed Agreement.

Fiscal Impact

The proposed changes in the attached Agreement were projected for in the agency’s budget.

Attachments

- A. Resolution Authorizing the Chair to Sign an Amended and Restated Employment Agreement with Chief Executive Officer Nicholas Chaset
- B. Amended and Restated Employment Agreement
- C. Redline showing changes to Employment Agreement since the 6th Amendment approved in 2022

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHAIR TO SIGN AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT WITH NICHOLAS CHASET FOR CHIEF EXECUTIVE OFFICER

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Powers 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 Joint Exercise of Powers Agreement (JPA) in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of EBCE and party to the JPA in September of 2022.

WHEREAS Section 4.10 of the JPA provides that the Board of Directors (“Board”) will appoint a Chief Executive Officer (CEO), who shall be responsible for the day-to-day operation and management of the EBCE and CCA Program, and provides for the powers and authority of the CEO.

WHEREAS On June 17, 2017, the Board appointed Nicholas Chaset as CEO of EBCE.

WHEREAS EBCE desires to retain Nicholas Chaset in this role.

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

Section 1. The Chair is authorized to sign the Amended and Restated Employment Agreement with any minor clerical or clarifying changes requested by the Chair and approved by General Counsel.

Section 2. The Amended and Restated Employment Agreement shall take effect on July 1, 2023.

ADOPTED AND APPROVED this 19th day of July, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the East Bay Community Energy Authority, also known as “East Bay Community Energy,” (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are sometimes collectively referred to herein as the “PARTIES.” For identification purposes, this Agreement is dated June 21, 2023.

RECITALS

This Employment Agreement is entered into on the basis of the following facts, understandings and intentions of the PARTIES:

A. The Alameda County Board of Supervisors and the City Councils of the City of Albany, the City of Berkeley, the City of Dublin, the City of Emeryville, the City of Fremont, the City of Hayward, the City of Livermore, the City of Newark, the City of Oakland, the City of Piedmont, the City of Pleasanton, the City of San Leandro, the City of Stockton, the City of Union City, and the City of Tracy (respectively, “Member”; or collectively, “Members”), adopted ordinances authorizing the implementation of a Community Choice Aggregation Program (“CCA Program”) to be operated by EBCE, pursuant to California Public Utilities Code Section 366.2(c)(12).

B. On December 1, 2016, eleven of the Members entered into an East Bay Community Energy Authority Joint Powers Agreement (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”) to operate and administer the CCA Program; since that date four additional Members have joined the JPA Agreement.

C. Section 4.10 of the JPA Agreement provides that the EBCE Board shall appoint a Chief Executive Officer (“CEO”) for the EBCE, who shall be responsible for the day-to-day operation and management of the EBCE and the CCA Program, and provides for the powers and authority of the CEO.

D. On June 21, 2017, EBCE appointed Nicholas Chaset (“EMPLOYEE”) as CEO of EBCE.

E. EMPLOYEE possesses the skill, experience, ability, background and knowledge to perform the duties and services provided by this Agreement as the CEO of EBCE.

F. EBCE desires to continue to retain the services of EMPLOYEE as its Chief Executive Officer on the terms provided by this Agreement.

G. The parties further desire to establish, amend, and restate the EMPLOYEE’s conditions of employment. This agreement represents a restatement of the EMPLOYEE’s prior Employment Agreement and previous amendments and supersedes all other agreements as of the effective date.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. EBCE shall employ EMPLOYEE as the Chief Executive Officer of EBCE, with the full power and authority to perform all of the duties of the Chief Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).
3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without EBCE’s prior written consent, tender to other services of any kind for compensation, or engage in any other business activity. Prior to engaging in any outside activity, EMPLOYEE shall obtain approval from an ad hoc committee consisting of the Chair, Vice Chair, and one additional board member to be appointed by the Chair.

In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be from the Effective Date of this Agreement until July 1, 2024.
5. Salary. Effective July 1, 2023 (“Effective Date”), EBCE will pay EMPLOYEE an annual base salary of four hundred fifty-nine thousand dollars (\$459,000), prorated and paid on EBCE’s normal paydays, subject to legally permissible or required deductions. EMPLOYEE’s salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law.

EMPLOYEE shall receive an annual bonus of ten percent (10%) of the base salary for the Fiscal Year 2022-2023 to be paid July 1, 2023.

Beginning in Fiscal Year 2023-2024, EMPLOYEE is eligible for a long term performance bonus of up to fifteen percent (15%) of the base salary based on the results of EMPLOYEE’s annual performance review, which is anticipated to be completed by June 2024. The bonus will be paid over three years starting on July 1 of the year after the applicable performance year (i.e. July 1, 2024 for Fiscal Year 2023-2024). The payment schedule is 25% of the bonus in Year 1, 25% of the bonus in Year 2, and 50% of the bonus in Year 3.

6. Evaluation of Performance. The Board shall evaluate the performance of EMPLOYEE before or around the start of each new fiscal year. Evaluations may be conducted more often at the Board's discretion. EMPLOYEE will request and schedule the minimum required evaluations as appropriate under the EBCE's agenda procedures or as otherwise directed by the Board.

7. Benefits. During the Term of this Agreement, EMPLOYEE shall be entitled to participate in any group insurance plan (including medical, dental, vision, life and disability), retirement program or similar plan or program of EBCE established by the Board during the term of this Agreement to the extent EMPLOYEE is eligible under its provisions. In the event EBCE establishes a separate benefit program for executive and management employees, EMPLOYEE shall be entitled to participate only in such benefit program. EBCE may establish additional benefit programs and may modify, reduce or eliminate any benefit plan or program in its discretion, in accordance with applicable law. In addition, EMPLOYEE shall be entitled to the following benefits:

a. Vacation. EMPLOYEE shall receive 6 weeks of vacation leave annually, of which 3 weeks are refundable. Except as otherwise provided in this Agreement, vacation leave shall be subject to any EBCE vacation policy applicable to employees generally.

b. Sick Leave. EMPLOYEE shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. Except as otherwise provided in this Agreement, sick leave shall be subject to any EBCE sick leave policy applicable to full-time employees generally. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

c. Holiday Leave. EMPLOYEE shall be entitled to the following paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Friday after Thanksgiving, Christmas Day. In the event a holiday falls on a weekend or another question arises in the administration of a holiday, the holiday will be administered in a manner similar to the benefit applied to executives in Alameda County until such time as EBCE adopts its own holiday policy applicable to employees generally. In addition, on July 1 of each year, EMPLOYEE will be credited with four floating holidays for use during the year from July 1 – June 30. EMPLOYEE must be employed on July 1 to be eligible to receive any floating holidays, floating holidays are not prorated.

d. Retirement. EMPLOYEE will be eligible to participate in any public retirement program or similar plan for which EBCE employees become eligible to participate. EMPLOYEE is eligible for an employer contribution of up to 15% of EMPLOYEE's salary (subject to IRS limits). EMPLOYEE has established retirement savings accounts under Internal Revenue Codes §§ 401(a), 457(b), and 415(m). In the event that the Total Combined Contribution to EMPLOYEE's 401(a) Retirement Plan reaches or exceeds the annual compensation limit set by

law, any remainder contribution, or portion thereof, which would otherwise be due notwithstanding the annual compensation limit, shall be directed, to the extent allowed by law, and without undue delay, to fund EMPLOYEE's 457(b) Retirement Plan with any excess directed to the 415(m) Retirement Plan. EMPLOYEE may, at his option, direct additional excess funds to any other retirement plan he is eligible for as an EBCE employee.

e. Car Allowance. EMPLOYEE's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and EMPLOYEE agrees to have a personal vehicle available for such use. In consideration of this, EBCE agrees to pay to EMPLOYEE, during the term of this Agreement and in addition to other salary and benefits, a car allowance of Six Hundred Dollars (\$600.00) per month. The car allowance includes reimbursement for an appropriate allocation of vehicle insurance and all other expenses of vehicle ownership, maintenance and operation. EMPLOYEE shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. EMPLOYEE shall submit proof of insurance on request.

f. Professional Organizations. Subject to availability of funds and with prior approval, EBCE agrees to pay or to reimburse EMPLOYEE for any budgeted, reasonable and necessary membership dues in professional organizations.

9. Expenses. During the employment term, and subject to the availability of funds, EBCE shall reimburse EMPLOYEE for budgeted and reasonable out-of-pocket expenses incurred in connection with EBCE's business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as EBCE may from time-to-time reasonably establish for its employees. Additionally, EMPLOYEE shall be entitled to Board-approved or budgeted and reasonable reimbursement for continuing education expenses, and for attendance at conventions, and conferences. EMPLOYEE may, upon request and prior approval by the EBCE Board, be reimbursed for budgeted and reasonable expenses incurred in attending additional events that are appropriate to EBCE's goals.

10. Termination of Agreement.

a. Termination by EBCE. EMPLOYEE is employed at the pleasure of the Board, and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

b. Termination on Resignation. EMPLOYEE may terminate the Agreement by giving EBCE at least 60 days (or more if possible) prior written notice. EBCE may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

c. Termination on Death. If EMPLOYEE dies during the term of this Agreement, this Agreement shall be terminated on the date of EMPLOYEE's death. All warrants or checks for accrued salary, accrued vacation or other items

shall be released to the person designated in writing by EMPLOYEE pursuant to Government Code Section 53245 or, if no designation is made, to EMPLOYEE's estate.

11. Severance. EBCE shall pay EMPLOYEE for all services through the effective date of termination. EMPLOYEE shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

a. If EBCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) without cause, EBCE shall pay EMPLOYEE a lump sum severance benefit equal to three months of his then applicable base salary.

b. If EBCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) with cause, EMPLOYEE shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

(1) A conviction, plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of EMPLOYEE's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by EMPLOYEE that materially and substantially harms EBCE's interests, materially and substantially impedes or disrupts the performance of EBCE or that is detrimental to employee safety or public safety.

c. If EMPLOYEE terminates this Agreement (thereby terminating EMPLOYEE's Employment), EMPLOYEE shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that EMPLOYEE may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the EBCE

for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

12. Miscellaneous Provisions.

a. Integration. Subject to all applicable Government code sections, the Agreement contains the entire agreement between the PARTIES and supersedes all prior oral and written agreements, understandings, commitments and practices between the PARTIES before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the PARTIES.

b. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances it shall nevertheless remain in full force and effect in all other circumstances.

c. Notices. Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to EBCE shall be addressed to the Secretary of the Board of Directors at the EBCE’s then principal place of business. Notice to EMPLOYEE shall be addressed to his home address, as then shown in EBCE’s files.

d. Agreement is Binding. This Agreement shall be binding upon and inure to the benefit of EBCE, its successor and assigns, and shall be binding upon EMPLOYEE, his administrators, executors, legatees, heirs, and assigns.

e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

Chair Elisa Márquez
East Bay Community Energy Authority

Nicolas Chaset

DATE: _____, 2023

DATE: _____, 2023

APPROVED AS TO FORM:

Inder Khalsa, General Counsel

ATTEST:

Adrian Bankhead, Clerk of the Board

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the East Bay Community Energy Authority, also known as “East Bay Community Energy,” (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are sometimes collectively referred to herein as the “PARTIES.” For identification purposes, this Agreement is dated June 21, ~~2017~~2023.

RECITALS

This Employment Agreement is entered into on the basis of the following facts, understandings and intentions of the PARTIES:

A. The Alameda County Board of Supervisors and the City Councils of ~~fourteen cities in Alameda County, namely~~ the City of Albany, the City of Berkeley, the City of Dublin, the City of Emeryville, the City of Fremont, the City of Hayward, the City of Livermore, the City of Newark, the City of Oakland, the City of Piedmont, the City of Pleasanton, the City of San Leandro, the City of Stockton, the City of Union City, and the City of Tracy (respectively, “~~Participant City~~Member”; or collectively, “~~Participant Cities~~Members”), adopted ordinances authorizing the implementation of a Community Choice Aggregation Program (“CCA Program”) to be operated by EBCE, pursuant to California Public Utilities Code Section 366.2(c)(12).

B. On December 1, 2016, eleven of the ~~Participant Cities and County~~Members entered into an East Bay Community Energy Authority Joint Powers Agreement (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”) to operate and administer the CCA Program; since that date four additional Members have joined the JPA Agreement.

C. Section 4.10 of the JPA Agreement provides that the EBCE Board shall appoint a Chief Executive Officer (“CEO”) for the EBCE, who shall be responsible for the day-to-day operation and management of the EBCE and the CCA Program, and provides for the powers and authority of the CEO.¶

D. On June 21, 2017, EBCE appointed Nicholas Chaset (“EMPLOYEE”) as CEO of EBCE.

E. ~~D.~~ EMPLOYEE possesses the skill, experience, ability, background and knowledge to perform the duties and services provided by this Agreement as the CEO of EBCE.

F. ~~E.~~ EBCE desires to continue to retain the services of EMPLOYEE as its Chief Executive Officer on the terms provided by this Agreement.

G. ~~F.~~ The parties further desire to establish, amend, and restate the EMPLOYEE’s conditions of employment. This agreement represents a restatement of the EMPLOYEE’s prior

Employment Agreement and previous amendments and supersedes all other agreements as of the effective date.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. EBCE shall employ EMPLOYEE as the Chief Executive Officer of EBCE, with the full power and authority to perform all of the duties of the Chief Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).
3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without EBCE’s prior written consent, tender to other services of any kind for compensation, or engage in any other business activity. Prior to engaging in any outside activity, EMPLOYEE shall obtain approval from an ad hoc committee consisting of the Chair, Vice Chair, and one additional board member to be appointed by the Chair.

In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be from the ~~effective date~~ Effective Date of this Agreement until July 1, ~~2023~~ 2024.

5. Salary. Effective ~~May 18, 2022~~ July 1, 2023 (“Effective Date”), EBCE ~~shall~~ will pay EMPLOYEE an annual base salary of ~~\$425,000~~ four hundred fifty-nine thousand dollars (\$459,000), prorated and paid on EBCE’s normal paydays, subject to legally permissible or required deductions. EMPLOYEE’s salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law. ¶

EMPLOYEE shall receive an annual bonus of ten percent (10%) of the base salary for the Fiscal Year 2022-2023 to be paid July 1, 2023. ¶

Beginning in Fiscal Year 2023-2024, EMPLOYEE is eligible for a long term performance bonus of up to fifteen percent (15%) of the base salary based on the results of EMPLOYEE’s annual performance review, which is anticipated to be completed by June 2024. The bonus will be paid

over three years starting on July 1 of the year after the applicable performance year (i.e. July 1, 2024 for Fiscal Year 2023-2024). The payment schedule is 25% of the bonus in Year 1, 25% of the bonus in Year 2, and 50% of the bonus in Year 3.

6. Evaluation of Performance. The Board shall evaluate the performance of EMPLOYEE ~~at before~~ or ~~about around~~ the ~~time start~~ of ~~program launch and at~~ each ~~annual anniversary thereafter~~ new fiscal year. Evaluations may be conducted more often at the Board's discretion. EMPLOYEE will request and schedule the minimum required evaluations as appropriate under the EBCE's agenda procedures or as otherwise directed by the Board.

7. Benefits. During the Term of this Agreement, EMPLOYEE shall be entitled to participate in any group insurance plan (including medical, dental, vision, life and disability), retirement program or similar plan or program of EBCE established by the Board during the term of this Agreement to the extent EMPLOYEE is eligible under its provisions. In the event EBCE establishes a separate benefit program for executive and management employees, EMPLOYEE shall be entitled to participate only in such benefit program. EBCE may establish additional benefit programs and may modify, reduce or eliminate any benefit plan or program in its discretion, in accordance with applicable law. In addition, EMPLOYEE shall be entitled to the following benefits:

a. Vacation. EMPLOYEE shall receive 6 weeks of vacation leave annually, of which 3 weeks are refundable. Except as otherwise provided in this Agreement, vacation leave shall be subject to any EBCE vacation policy applicable to employees generally.

b. Sick Leave. EMPLOYEE shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. Except as otherwise provided in this Agreement, sick leave shall be subject to any EBCE sick leave policy applicable to full-time employees generally. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

c. Holiday Leave. EMPLOYEE shall be entitled to the following paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Friday after Thanksgiving, Christmas Day. In the event a holiday falls on a weekend or another question arises in the administration of a holiday, the holiday will be administered in a manner similar to the benefit applied to executives in Alameda County until such time as EBCE adopts its own holiday policy applicable to employees generally. In addition, on July 1 of each year, EMPLOYEE will be credited with four floating holidays for use during the year from July 1 ~~—~~ June 30. EMPLOYEE must be employed on July 1 to be eligible to receive any floating holidays, floating holidays are not prorated.

d. Retirement. EMPLOYEE will be eligible to participate in any public retirement program or similar plan for which EBCE employees become eligible to participate. EMPLOYEE is eligible for an employer contribution of up to 15% of

EMPLOYEE's salary (subject to IRS limits). EMPLOYEE has established retirement savings accounts under Internal Revenue Codes §§ 401(a), 457(b), and 415(m). In the event that the Total Combined Contribution to EMPLOYEE's 401(a) Retirement Plan reaches or exceeds the annual compensation limit set by law, any remainder contribution, or portion thereof, which would otherwise be due notwithstanding the annual compensation limit, shall be directed, to the extent allowed by law, and without undue delay, to fund EMPLOYEE's 457(b) Retirement Plan with any excess directed to the 415(m) Retirement Plan. EMPLOYEE may, at his option, direct additional excess funds to any other retirement plan he is eligible for as an EBCE employee.

e. Car Allowance. EMPLOYEE's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and EMPLOYEE agrees to have a personal vehicle available for such use. In consideration of this, EBCE agrees to pay to EMPLOYEE, during the term of this Agreement and in addition to other salary and benefits, a car allowance of Six Hundred Dollars (\$600.00) per month. The car allowance includes reimbursement for an appropriate allocation of vehicle insurance and all other expenses of vehicle ownership, maintenance and operation. EMPLOYEE shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. EMPLOYEE shall submit proof of insurance on request.

f. Professional Organizations. Subject to availability of funds and with prior approval, EBCE agrees to pay or to reimburse EMPLOYEE for any budgeted, reasonable and necessary membership dues in professional organizations. ¶

~~g. Retention Bonus. EMPLOYEE shall be eligible for a one-time retention bonus of Fifty Thousand Dollars (\$50,000.00), if EMPLOYEE remains employed through the contract term of this Agreement. This retention bonus will be paid, less applicable withholdings, in four equal installment payments of \$12,500.00 each on July 1, 2022, October 1, 2022, January 1, 2023, and April 1, 2023. Should EMPLOYEE separate from employment before the end of the contract term, EMPLOYEE shall not be entitled to payment of any installment payments past his separation date, and EMPLOYEE shall repay any previous installment payments already made. EMPLOYEE agrees that repayment of the retention bonus may be deducted from any payment owed to him at the time of separation.~~

9. Expenses. During the employment term, and subject to the availability of funds, EBCE shall reimburse EMPLOYEE for budgeted and reasonable out-of-pocket expenses incurred in connection with EBCE's business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as EBCE may from time-to-time reasonably establish for its employees. Additionally, EMPLOYEE shall be entitled to Board-approved or budgeted and reasonable reimbursement for continuing education expenses, and for attendance at conventions, and conferences. EMPLOYEE may, upon request and prior approval by the EBCE Board, be reimbursed for budgeted and reasonable expenses incurred in attending additional events that are appropriate to EBCE's goals.

10. Termination of Agreement.

a. Termination by EBCE. EMPLOYEE is employed at the pleasure of the Board, and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

b. Termination on Resignation. EMPLOYEE may terminate the Agreement by giving EBCE at least 60 days (or more if possible) prior written notice. EBCE may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

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(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of EMPLOYEE's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board

made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by EMPLOYEE that materially and substantially harms EBCE's interests, materially and substantially impedes or disrupts the performance of EBCE or that is detrimental to employee safety or public safety.

c. If EMPLOYEE terminates this Agreement (thereby terminating EMPLOYEE's Employment), EMPLOYEE shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that EMPLOYEE may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the EBCE for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

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d. Agreement is Binding. This Agreement shall be binding upon and inure to the benefit of EBCE, its successor and assigns, and shall be binding upon EMPLOYEE, his administrators, executors, legatees, heirs, and assigns.

e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY

shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

¶

¶

Chair Elisa Márquez Nicolas Chaset
East Bay Community Energy Authority ¶

DATE: _____, 2023 DATE: _____, 2023¶

APPROVED AS TO FORM:¶

¶

Inder Khalsa, General Counsel ¶

ATTEST:¶

¶

Adrian Bankhead, Clerk of the Board

Document comparison by Workshare 10.0 on Wednesday, July 12, 2023
5:23:50 PM

Input:	
Document 1 ID	iManage://RWGDM1/RWGIMAN1/2834616/1
Description	#2834616v1<RWGIMAN1> - 6th Amended Chaset Employment Agreement for comparison
Document 2 ID	iManage://RWGDM1/RWGIMAN1/2818599/2
Description	#2818599v2<RWGIMAN1> - EBCE Amended and Restated CEO Nick Chaset Employment Agreement 062323
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	41
Deletions	22
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	63

EBCE Public Comment received for 7/19/23 Executive Committee Meeting

Letter #	Name	Date
1	Jessica Tovar	7/18/2023



To: EBCE Board of Director, Staff and Community Advisory Committee

LCEA Comment: EBCE Agenda Consent Item #9

Local Clean Energy Alliance would like to comment on what is currently consent item # 9 on the EBCE Board agenda for Wednesday, July 19, 2023. We ask EBCE Board members to remove this item from the consent agenda, so that it can be commented on by the public and debated by the Board.

The item calls for a \$85,000 investment in a Drive and Charge Research and Development Program, as part of what will be a \$6 million investment in increasing electric vehicle (EV) adoption, particularly in areas around affordable multifamily housing. The program proposes to lease 6 different types of EVs, which would be lent to EBCE staff for a 2 week period. Staff and passengers would be required to complete surveys on their experiences. Completed surveys would provide data to be used by the local development team in developing the \$6 million program.

We think this program is unlikely to achieve its goals as described, and could be much more effective if certain changes were made. This pilot program will be carried out with an EV leasing company, Zevvy, which already provides short term leasing of EVs to customers. Wouldn't it be more effective to provide Zevvy with funds (\$85,000) to offer free short-term leases to people in communities with affordable multifamily housing, in return for getting feedback on those experiences? Wouldn't the data collected from people who actually live in those communities be more pertinent to developing the \$6 million EV adoption program?

The notion that a major obstacle to EV adoption in low income communities is not having a "good" first time experience, belies the kind of privileged outlook that might be expected of people with very good paying jobs, such as EBCE staff. The major reason there is not more adoption of EVs in low income communities is the "low income," due to the lack of private investment in those communities, as cited in the description. New EVs are expensive and tend to have much shorter life spans than combustion engine vehicles. Wouldn't it make more sense for EBCE to invest \$85,000 in low income areas where the agency has already installed fast charging, so that folks who live in these communities can try out these vehicles and become

familiar with them. This would also give EBCE more authentic feedback to use in developing the \$6 million program.

There may be good EBCE Staff responses to these concerns, but the public will not hear those responses as long as the item is on consent. Please take item #9 off the consent agenda so that the public and the Board can hear more about it and make comments.

Sincerely,

Jessica Tovar
Local Clean Energy Alliance