



Board of Directors Meeting

Wednesday, October 18, 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
- Conference Room, Irvington Community Center, 41885 Blacow Rd., Fremont, CA 94538
- 1755 Harvest Landing Lane, Tracy, CA 95376
- Centennial Plaza Resort - Lobby, 200 E Beach Blvd. Gulfport, MS 39507

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 September 20, 2023**
- 5. Contracts Entered into (Informational Item)**
- 6. Treasurer's Report**
Report on EBCE's cash position as of Sept 30, 2023
- 7. Department of Energy Conflict of Interest Policy**
Adoption of DOE conflict of interest policy
- 8. CSA with Project6**
Direct CEO to negotiate agreement with Project6 for Web Development services
- 9. CQuant Contract Renewal**
Renewal of cQuant CSA

REGULAR AGENDA

- 10. CEO Report**
- 11. CAC Chair Report**
- 12. Emissions Overview (Informational Item)**
Informational Overview on Emissions
- 13. Joint Powers Authority Amendment (Action Item)**
Adopt an amendment to change name to Ava Community Energy
- 14. Legislative Update (Informational Item)**
Informational update on the 2023 state and federal legislative process
- 15. Sunzia Project Agreement (Action Item)**
Requesting approval of long term Agreement for 150 MW of Wind online by 9/30/26
- 16. Board Member and Staff Announcements including requests to place items on future Board agendas**
- 17. Closed Session**
 - Public Employee Performance Evaluation pursuant to Government Code § 54957: Chief Executive Officer.
- 18. General Report Out of Closed Session**

19. Adjourn

The next Board of Directors meeting will be held on Wednesday, November 15, 2023 at 6:00 pm.



Board of Directors Meeting

CAC Annotated Version

Wednesday, October 18, 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
- Conference Room, Irvington Community Center, 41885 Blacow Rd., Fremont, CA 94538
- 1755 Harvest Landing Lane, Tracy, CA 95376
- Centennial Plaza Resort - Lobby, 200 E Beach Blvd. Gulfport, MS 39507

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 September 20, 2023

5. Contracts Entered into (Informational Item)

6. Treasurer's Report

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

7. Department of Energy Conflict of Interest Policy

Adoption of DOE conflict of interest policy

8. CSA with Project6

Direct CEO to negotiate agreement with Project6 for Web Development services

9. CQuant Contract Renewal

Renewal of cQuant CSA

REGULAR AGENDA

10. CEO Report

11. CAC Chair Report

Net Billing Tariff (NBT): The CAC requests that the Board hear this item with enough time to make a recommendation that allows staff to create an alternative to NBT if that is the Board's direction. Dec 2024 seems too far out to ask the Board for direction.

Community Innovation Grants:

- Desire to see smaller grants and easier applications for Small, Local, and Emerging Businesses and Community Based Organizations.
 - Recommend a couple smaller (50k) multi year grants.
 - Request a few small 1 time grants for pilot projects/ proof of concepts
- Looking to see a presentation of an issue and an RFP issued on how to address those issues, as opposed to entirely prescriptive grant offerings.
- Recommend the same selection process as used last round. (a combination of Board and CAC members received, reviewed, and selected the grantees)
- Strongly support staff's idea of providing technical assistance to small, local, and emerging businesses and CBOs who want to apply for grants.
- Support the Resilience Hubs and Clean Energy Jobs concepts, with less enthusiasm in Energy Education/Awareness and Community Ownership of EV charging stations as presented. Innovation grants should be separate from marketing and advertising budgets.

12. Emissions Overview (Informational Item)

Informational Overview on Emissions

Great job on lower increases in electricity rates than other CCAs. Good trajectory to achieve 75% renewables and 100% carbon free by 2030 without nuclear. Our CO₂e/MWh is falling behind other similarly sized CCAs who also do not have nuclear and also offer cost savings. Pleased to see the nuclear allocation is not as significant a factor as previously projected.

We could be cleaner, would like lower CO₂e/MWh and would prefer to see more local renewables. The new accounting method measures the emissions in the air our constituents breathe, it is important to reduce environmental pollutants here.

CAC expressed concerns regarding staff portrayal of the 'trade-off' between nuclear and greenhouse gas emissions. In 2020, the Board voted to take the nuclear allocation and sell it, but were unable to do so due to lack of demand.

13. Joint Powers Authority Amendment (Action Item)

Adopt an amendment to change name to Ava Community Energy

Support staff's recommendation: passed with 1 abstention and all others yes.

14. Legislative Update (Informational Item)

Informational update on the 2023 state and federal legislative process

15. Sunzia Project Agreement (Action Item)

Requesting approval of long term Agreement for 150 MW of Wind online by 9/30/26

CAC discussion ensued about need and desire to fund local projects, ultimately supporting the project by a vote of 5 (yes) to 4 (abstentions).

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

- \$14.75M from the budget meeting that was to return to us before the end of the year to make a decision on its use.
- The same funds from this year's budget to decide the desired use
- status update on bringing the call center in house
- intentions with the acquired property in Oakland

17. Closed Session

· Public Employee Performance Evaluation pursuant to Government Code § 54957: Chief Executive Officer.

18. General Report Out of Closed Session

19. Adjourn

The next Board of Directors meeting will be held on Wednesday, November 15, 2023 at 6:00 pm.



Draft Minutes

Board of Directors Meeting

Wednesday, September 20, 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 Fremont, Human Resource Training Room, 3300 Capitol Avenue Building B, Fremont, CA 94538
- Sacramento Convention Center West Lobby, 1st Fl. 1400 J St., Sacramento, CA 95814
- Hyatt Regency Sacramento Business Center - 1209 L Street, CA 95814
- 1755 Harvest Landing Lane, Tracy, CA 95376
- Grand Sheraton lobby - 1230 J St, Sacramento, CA 95814

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

Present: Directors: Tiedemann (Albany), Bartlett (Berkeley), Cox (Fremont), Roche (Hayward), Barrientos (Livermore), Jorgens (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: Hu (Dublin) and Bauters (Emeryville)

2. Pledge of Allegiance

Chair Marquez led the body in the 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.

Chair Marquez announced that letters submitted for public comment will no longer be read into the record during public comment but will instead be made available on the public meetings page and in the agenda packet.

(11:38) Tim Frank, representing the CCA Workforce and Environmental Justice Alliance and serving as a consultant for the Alameda County building trades and other Bay Area building trades councils, spoke about their collaboration with 38 environmental justice and labor groups. Their initial aim was to establish environmental justice and labor standards at CCPower. Despite some support, a majority of the CCPower board did not agree. They then shifted their focus to individual CCA's. They have already secured the adoption of a similar package in CCCE, San Francisco, and on the peninsula. Mr. Frank has left a draft proposal for EBCE that has undergone revisions based on feedback from local partners. He hopes the board will discuss and act on it in October. He welcomes any further suggestions or feedback before the next meeting.

Tim Frank's draft proposal is included in the minutes as Exhibit A.

(19:40) Jessica Tovar from East Bay Clean Power Alliance commented on the induction cooking Request for Proposals (RFP) grant issued by EBCE. She expressed concerns about the RFP's structure and its accessibility for small organizations, noting challenges in applying for these funds. She emphasized that community innovation grants should be easily accessible to community groups. Using the current excess smoke issue and PG&E's power shutoffs as an example, she highlighted the pressing need for community resilience in the face of climate change-related challenges. Jessica Tovar stated that EBCE had set aside money for these grants over a year ago but has yet to disburse them, and urged timely action.

(17:04) Melissa Yu, representing both the Sierra Club and East Bay Clean Power Alliance, addressed the board to advocate for the discussion of policy standards for clean energy projects, as previously presented by Tim Frank. She emphasized the need for energy procurement projects to prioritize environmental and environmental justice considerations, while also upholding labor standards and strong environmental justice policies. Their goal is to establish these standards comprehensively, preventing

piecemeal decisions for future projects. They are currently collaborating with labor and environmental justice projects to enhance a resolution they've drafted. Melissa hopes for board feedback and for the topic to be discussed in the upcoming board meeting. She mentioned their broader aim to extend this process beyond Alameda and San Joaquin County, seeking continued leadership from the board and aiming to present the draft resolution to the California Community Power Board.

(18:29) Jason Gumataotao, representing IVW Local 595 and a delegate of the Alameda County Building Trades Council, echoed the sentiments shared by Melissa and Tim. He emphasized the importance of feedback on the presented policy proposal. Jason highlighted the goal to elevate standards for EBCE's future clean energy projects, stressing that success requires strong collaboration with the board, environmental justice groups, trades, and the broader community. He expressed gratitude for the board's consideration and looks forward to future discussions.

(19:40) An anonymous speaker, affiliated with the local Clean Energy Alliance and the East Bay Clean Power Alliance, reiterated points from Tim Frank's letter.

The speaker emphasized the need for support for workforce development standards, aiming to extend these to multiple CCAs. The objective is to defend workers in EBCE's service region and ensure jobs stay local, aligning with the mandate of the local development business plan.

The speaker stressed the importance of making community innovation grants more accessible, stating that the current narrow focus of the induction cooktop grant is limiting for smaller, local community organizations. These organizations can efficiently handle both education and broader decarbonization initiatives.

The speaker pointed out that the \$14.75 million, intended for bill credits in the June 2023 meeting, hasn't been reallocated. The speaker requested these funds to support community-based organizations in the municipal facilities program. This could help establish these organizations as resilience hubs.

Lastly, the speaker requested clarity regarding the \$5 million allocated to the Health-Communities program, as health partners have not been specified yet.

(21:49) Eric Veium, coordinator for the CCA Workforce and Environmental Justice Alliance, discussed an analysis conducted on EBCE's current policy documents and recent RFOs. While the joint powers agreement features strong language supporting workforce and environmental justice standards, Eric Veium stated that there are inconsistencies in both policy and practice. For example, while there's decent policy within the disadvantaged community and community solar RFOs, the recent municipal resilience RFO lacks crucial language on workforce and community benefits. Eric Veium and his team are proposing a policy draft to establish consistent standards for EBCE and other CCAs statewide, building upon work with other energy entities. He is eager to continue the dialogue and values the opportunity for collaboration with the board and staff.

4. **Approval of Minutes from July 13, 2023 and July 19, 2023**
5. **Contracts Entered into (Informational Item)**
6. **Energy Prepay #3 Summary**
Energy Prepay Transaction #3 Summary of Results
7. **ARUP Contract Amendment**
Increase funding and scope for Transportation Electrification consulting
8. **MRP Incremental BESS**
Consent to correct the record

(24:15) **EBCE Counsel Inder Khalsa** pointed out a correction that needs to be made in Item 5. Contracts Entered into (Informational Item). For C-2023-086, the correction is shown below in *bold italics*:

C-2023-086 BCAL LMP HARRISON PROPERTY LLC LAKE MERRITT PLAZA OFFICE LEASE
Seven (7) year and Seven (7) month lease; from April 1, 2025, through October 31,
2023, for 1999 Harrison Suite 2300.

Should read:

C-2023-086 BCAL LMP HARRISON PROPERTY LLC LAKE MERRITT PLAZA OFFICE LEASE
Seven (7) year and Seven (7) month lease; from April 1, 2025, through October 31,
2032, for 1999 Harrison Suite 2300. (Bold and italics by clerk.)

(26:20) Member Gonzalez (San Leandro) motioned to approve Consent Agenda, inclusive of Counsel Inder Khalsa's correction to Item 5. Contracts entered into. Member Roche (Hayward) seconded the motion which passed 14/0.

Excused: Members Hu (Dublin) and Bauters (Emeryville)

REGULAR AGENDA

9. **CEO Report**

CEO Chaset reported that a Special Board Retreat for Analytics was held on July 13. The September executive committee meeting was canceled, but the next one will be held on October 4, 2023. There was a Finance, Administration and Procurement Subcommittee meeting on September 5th. Members received updates on the audit status and a review of prepaid transactions.

CEO Chaset reported that Daniel Pratt was hired as a Finance Associate and Ryne Dudley as the Manager of Structured Finance.

CEO Chaset additionally stated that compliance-related mailers are being sent out, one of which is the annual joint rate mailer comparing EBCE's rates with PG&E's, reflecting a

current discount of 5 percent. Additionally, a power content mailer will be sent out that will introduce customers to "Ava Community Energy" along with its brand and logo, marking the first public unveiling of this new name.

(31:45) Jessica Tovar, representing East Bay Clean Power Alliance, addressed an item concerning the Diablo Canyon Nuclear and the Cal CCA's interest in its energy. She emphasized the community's clear stance against incorporating nuclear energy into the East Bay Community Energy Program. Instead, she advocated for investments in local clean energy jobs and highlighted the importance of remembering this preference from the community's past discussions.

10. CAC Chair Report

(34:30) CAC Chair Eldred acknowledged the passing of Al Weinrub, a pivotal figure who contributed greatly to the creation of East Bay Community Energy. Chair Eldred stated that Al Weinrub dedicated thousands of hours towards the cause, including legislation that enabled the formation of Community Choice Aggregations (CCAs) in California. 50 years of his writings, dubbed the "Al Weinreb justice papers," have been added to the University of Massachusetts campus libraries. Chair Eldred stated that there is an upcoming memorial for Al Weinreb, and donations are encouraged to the Al Weinreb justice fund in lieu of flowers.

Chair Eldred stated that at the last CAC meeting, CAC Member Lutz interviewed city planning staff and received overwhelmingly positive feedback regarding their interaction with EBCE staff. A response from the staff to this feedback is included in the report.

Chair Eldred also brought attention to the Cal CCA filing concerning the Diablo Canyon extension proceedings. The filing outlines the allocation of non-bypassable charges among customers and discusses resource adequacy capacity from greenhouse gas-free attributes post-2025. Eldred voiced concerns about this filing, particularly regarding the allocation of charges via the PCIA and the impact on rate payers, considering there is a plan that shows a way forward without relying on that energy.

11. Inclusion of New Communities: City of Lathrop (Action Item)

Consider City of Lathrop EBCE/JPA membership

(50:31) Member Gonzalez (San Leandro) asked under what circumstances EBCE would not want to include a new city. Member Gonzalez then followed up to ask under what circumstances should EBCE should be cautious about incorporating a new city.

(54:15) Member Roche (Hayward) asked for staff to describe what EBCE says to potential new cities about Bright Choice and Renewable 100.

(57:45) Member Anderson (Piedmont) asked if the option to opt-out by large commercial and industrial accounts in Lathrop could poses a risk to the 7% opt out assumption in staff's analysis of Lathrop's energy use.

(59:25) CAC Chair Eldred expressed enthusiasm for the potential of solar and battery in the new communities joining EBCE, emphasizing the importance of battery storage given solar challenges like the "duck curve." She voiced concerns about rapid growth of the CCA, cautioning that accepting large communities could overshadow smaller cities in governance decisions. Eldred stressed the importance of aligning with community values and ensuring local benefits. She also supported the staff's efforts on the "cleaner" initiative, highlighting its trajectory towards higher renewable energy levels at cost savings.

(1:02:55) Member Gonzalez (San Leandro), following up on Member Anderson's question, asked about the impact on staff's analysis of the opt out rate went to 10%. Member Gonzalez asked if tracking megawatt hour opt-out rate might produce a more consequential metric.

(1:05:00) Member Gonzelez (San Leandro) motioned to approve the staff recommendation. Member Tiedemann seconded the motion, which passed 14/0

Excused: Members Hu (Dublin) and Bauters (Emeryville).

Member Bartlett (Berkeley) left the meeting at 7:06pm.

12. Update on Brand (Informational Item)

Share logo, updated timeline, list of items that will change on 10/24, overview of how we are supporting Muni-Pals

(1:11:56) Member Gonzalez (San Leandro) ask for staff to elaborate on the implications of changing the name via JPA amendment, in addition to eliminating the need for councils to approve new ordinances.

(1:14:00) CAC Chair Eldred mentioned feedback from Jessica Tovar, who highlighted that in Spanish, "AVA" is pronounced like the female name "Ava" (phonetically pronounced "aah-va").

(1:15:15) Member Cox (Fremont) inquired if, after the launch, the EBCE url will be available online alongside the Ava Community Energy url for a period of time.

(1:16:35) Member Balch (Pleasanton) asked when rate-payers will see the change to Ava Community Energy on their bills.

13. 2022 Power Source Disclosure Annual Report and Power Content Label (Action Item)

Requesting the Board to accept and attest to the 2022 Power Source Disclosure Report and Power Content Label

(1:26:48) Chair Marquez noted that this item is an Action rather than an Informational Item.

(1:27:24) CAC Chair Eldred asked about the overall emissions profile of the combined EBCE portfolio as compared to the state average. Noting the consumer percentage

breakdown of EBCE's past and present power mix, CAC Chair Eldred inquired about how the combined EBCE load compares to the entire state of California.

(1:28:48) Member Tiedemann (Albany) noted that EBCE's average greenhouse emission intensity has decreased from 497 to 385 lbs CO₂e/MWh.

(1:29:18) Member Gonzalez (San Leandro), noting that the resolution asks for the board to attest to the veracity of the information, inquired if an auditor has issued an attestation. Member Gonzalez also asked if executives are required to attest.

(1:30:44) Member Balch (Pleasanton) inquired about the reclassification of power from PCC1 to PCC2 due to its transmission from other jurisdictions. He asked how much of EBCE's energy undergoes this reclassification process. Member Balch also inquired if staff tracks PCC1 purchased geographically that would convert to PPC2. This tracking could provide for improved carbon accounting, Member Balch stated.

(1:37:18) Member Gonzalez (San Leandro) sought clarity on the prohibition by state law regarding marketing different carbon account methodologies and the legal implications of such actions. CEO Chaset clarified that they are not allowed to market alternative carbon accounting methods contrary to the California Energy Commission methodology. Member Gonzalez then drew an analogy with GAAP accounting, noting that while public corporations must adhere to GAAP, they can also provide non-GAAP metrics for informational purposes.

Member Gonzalez also expressed discomfort as a board member in attesting to numbers he hadn't audited. In discussing the attestation requirements, Izzy Carson stated that as a public agency, board members have the option to either attest themselves or undergo an external audit. Member Gonzalez sought clarity on the consequences of not attesting. Ms. Carson explained that not attesting could result in non-compliance, which may or may not draw fines, but emphasized the agency's commitment to avoid such scenarios. The alternative to attestation would be an external audit.

(1:41:01) Member Tiedemann (Albany) praised staff for their work, particularly noting the decrease in emissions from 497 to 385, a reduction of over 20%. He emphasized that achieving such a reduction is even more impressive given California's already clean energy grid. Member Tiedemann also highlighted the increase in the total megawatt hours by approximately 660,000 since the last report, with over 500,000 of those hours in the "renewable 100" category. He applauded the success in promoting Renewable 100 and credited the staff for effectively marketing it.

Member Tiedmann (Albany) motioned to approve the staff recommendation.
Member Jorgens (Newark) seconded the motion, which passed 12-1-3

Aye: Members Tiedmann, Cox, Roche, Barrientos, Jorgens, Kalb, Andersen, Wright, Bedolla, Patino, Vice-Chair Balch and Chair Marquez

Nay: Member Gonzalez

Excused: Members Bartlett, Hu and Bauters

14. Update on Planning for Net Billing Tariff (NBT) (Informational Item)

Brief review of NBT planning and overview of status

Chair Marquez requested a roll call vote to table Item 14 until the October BOD meeting. The motion was approved 13/0

Excused: Members Bartlett, Hu and Bauters.

15. CAC Structure per Ad Hoc Board Committee Recommendation (Discussion Item)

Discussion of Restructure CAC per Ad Hoc recommendation

(1:53:30) CAC Chair Eldred expressed deep appreciation for the staff's efforts in examining the structure of the CAC, emphasizing the importance of community input on any changes, especially given historical contentions around its formation. She voiced strong support for the current regional allocation of CAC seats based on energy load rather than population. Moreover, she underscored the foundational intent behind the CAC to ensure both geographical representation and a mix of technical and constituent groups. This mix, she highlighted, should include representation from environmental justice, low-income sectors, labor, and faith communities. CAC Chair Eldred proposed the creation of an ad hoc committee to reevaluate and present potential changes to the CAC structure. While acknowledging challenges, she stressed the value of retaining active CAC members and highlighted the vital role of alternates, who often ensure quorum. She suggested a rotating system to keep alternates engaged and floated the idea of stipends for their meeting attendance. CAC Member Eldred also articulated the CAC's role in channeling community insights to the board, reflecting a blend of technical expertise and lived experiences.

(2:02:36) Member Balch discussed potential structural changes to the CAC and the implications of shifting a seat to San Joaquin County. While CEO Chaset highlighted the urgency of making decisions due to an approaching reappointment deadline, CAC Chair Eldred suggested a multi-step approach: implementing the recommended seat shift, altering the alternate structure, adding stipends, and having the CAC develop a recruitment framework by October. Chair Marquez emphasized the immediate need to decide on retaining the regional component and possibly adding a seat for Stockton, with CEO Chaset stressing the importance of adhering to their timeline.

(2:08:26) Jessica Tovar emphasized the importance of maintaining diverse representation on the CAC. She recalled the CAC's original formation, which included members from various sectors like faith, clean energy, social and environmental justice, labor, and low-income ratepayers. Jessica Tovar also suggested including representation from the disability justice community. She expressed concerns about a shift from this diverse representation to a geographically based one, advocating for a combination of both. Furthermore, she endorsed the idea of allowing alternates to attend meetings, stressing their potential role in understanding the often technical discussions about energy and the possibility of their eventual promotion into the CAC.

(2:10:47 - 2:30:17) Deliberation about CAC Structure:

- There was general agreement to keep the regional representation structure of the CAC, with some reallocation of seats to reflect EBCE's expansion into San Joaquin County.
- There was support to provide a stipend to CAC alternates if they attend meetings and vote when standing in for an absent member. This would help ensure full regional representation at meetings. However, some clarification is still needed on details of alternate stipend eligibility.
- There were concerns raised about changing the alternates to a pool structure instead of being tied to specific jurisdictions. More discussion is needed to understand the implications around the Brown Act and meeting attendance/participation. No decision was made on this issue.
- There was discussion around expanding CAC membership to be more inclusive of diverse constituencies beyond regional representation. An ad hoc committee will be formed to develop recommendations on this, to bring back to the Board in early 2023.
- As a bridge while the ad hoc committee does its work, there was general agreement to extend current CAC member terms by 6 months. A formal vote on this will happen at the October board meeting.
- The CAC Chair requested keeping staggered terms for continuity. An ad hoc committee will consider this in their recommendations.
- Clarification is still needed on how to handle the at-large CAC seats now that EBCE covers non-Alameda County cities. An ad hoc committee will look at options like having one at-large seat per county.

16. Memorial Comments in Honor of Al Weinrub

(2:30:40) Member Kalb honored the memory of Al Weinrub, emphasizing his contribution to social justice and climate issues. Member Kalb described Weinrub as a notable figure who inspired many with his dedication to the democratization of the energy system. While acknowledging that many were already aware of Weinrub's impact, Kalb expressed his deep sense of loss and shared condolences, particularly underscoring his personal sorrow and sympathy for Weinrub's family.

(2:32:30) Jessica Tovar noted that Al Weinrub, who served as the coordinator of the Local Clean Energy Alliance for many years, played a pivotal role in advancing community choice in energy not just in the East Bay but throughout California. Jessica Tovar noted that Al Weinrub was celebrated as a visionary who championed the cause of clean energy jobs, equity, reducing local pollution, and combating the climate crisis. Jessica Tovar affirmed her commitment to honor Al Weinrub's legacy by advocating for the rights and well-being of disadvantaged communities in Alameda and San Joaquin Counties.

(2:35:06) CAC Chair Eldred shared her memories and appreciation for Al Weinrub by highlighting his advocacy for justice and contributions to the community. Chair Eldred emphasized Al Weinrub's significance, noting that his work's acceptance at UMass Amherst speaks to his impact. She mentioned his disappointment with EBCE, which led him to shift his focus to other energy projects. Eldred stated that the current board has potential to embody Al Weinrub's core values and stressed the importance of uniting different advocacy groups.

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

- **Vice-Chair Balch** requested to bring before the executive committee or the appropriate body a staff presentation of the controls in place to show that the power content label attestation process is sound, and, also, executive director attestation to the Board prior to the Board's own attestation.
- **CAC Chair Eldred** requested that the CCA Workforce and EJ Alliance resolution be agendized at a future meeting. After discussion, it was decided that the Financial, Administrative and Procurement subcommittee should discuss this item at their November 8, 2023 meeting and provide a recommendation to the Board.
- **Member Gonzalez** asked if a Rules committee was needed and requested that the Board think about how it assigns work to staff and committees.

18. Closed Session

- Public Employee Performance Evaluation pursuant to Government Code § 54957: Chief Executive Officer.

19. General Report Out of Closed Session

(3:48:55) Inder Khalsa, EBCE General Counsel, stated that there were no items to report out of closed session.

20. Meeting adjourned in memory of Al Weinrub at 9:47pm.

The next Board of Directors meeting will be held on Wednesday, October 18, 2023 at 6:00 pm.

Proposed by CCA Workforce and EJ Alliance

<https://action.greencal.org/action/wej>

September 20, 2023

DRAFT: East Bay Community Energy (EBCE) Workforce, Environmental, and Environmental Justice Standards for Clean Energy Project Selection Policy

PREAMBLE

WHEREAS, EBCE, as a Community Choice Aggregation, is a mission-driven public agency, collectively financed by constituent public ratepayers, with an obligation and opportunity to support and protect workers and the communities hosting EBCE's clean energy projects.

WHEREAS, EBCE, a mission-driven public agency committed to diversity, equity, and inclusion, has the opportunity to align with and support the values and mission of high-road union construction trade labor and environmental justice organizations striving to create sustainable and equitable communities.

WHEREAS, Central Coast Community Energy (3CE), a peer CCA to EBCE, adopted similar standards to the recommended standards below in June 2023 after extensive deliberation by its Board of Directors and Citizens Advisory Committee.

WHEREAS, 3CE'S procurement standards serve as a foundation for best practices and build on similar standards adopted earlier by Peninsula Clean Energy and the San Francisco Public Utilities Commission (CleanPowerSF).

WHEREAS x% of customers in existing service territory are CARE, FERA, or Medical baseline customers, and x% in San Joaquin Counties (staff support requested to advise on these values).

WHEREAS, rate payer dollars can create local benefits through the creation of jobs and supporting local, small local, and emerging businesses in our service territory by keeping dollars in circulation.

WHEREAS, EBCE's Joint Powers Agency Agreement, dated effective November 1, 2016, as amended by Resolution No. 2018-23 dated June 20, 2018, declares the agency's purpose as follows:

- Provide electricity rates that are lower or competitive with those offered by PG&E for similar products;

Exhibit A

- Develop an electric supply portfolio with a lower greenhouse gas (GHG) intensity than PG&E, and **one that supports the achievement of the parties' greenhouse gas reduction goals** and the comparable goals of all participating jurisdictions;
- Establish an energy portfolio that **prioritizes the use and development of local renewable resources** and minimizes the use of unbundled renewable energy credits;
- Promote an energy portfolio that **incorporates energy efficiency and demand response programs and has aggressive reduced consumption goals**;
- **Demonstrate quantifiable economic benefits to the region (e.g. union and prevailing wage jobs, local workforce development, new energy programs, and increased local energy investments)**;
- **Recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California.** The Authority, as a leader in the shift to a clean energy, commits to ensuring it will **take steps to minimize any adverse impacts to these workers to ensure a "just transition" to the new clean energy economy**;
- Deliver clean energy programs and projects **using a stable, skilled workforce through such mechanisms as project labor agreements or other workforce programs that are cost effective, designed to avoid work stoppages, and ensure quality**;
- Promote personal and community ownership of renewable resources, spurring **equitable economic development and increased resilience, especially in low income communities**;
- Provide and manage lower cost energy supplies in a manner that **provides cost savings to low-income households and promotes public health in areas impacted by energy production**; and
- Create an administering agency that is financially sustainable, responsive to regional priorities, well managed, and a leader in fair and equitable treatment of employees through **adopting appropriate best practices employment policies, including, but not limited to, promoting efficient consideration of petitions to unionize and providing appropriate wages and benefits.**

THEREFORE, BE IT RESOLVED THAT,

In support of competitive, clean, and renewable power supply, as well as the development of a local and diverse workforce, the Governing Board of East Bay Community Energy (EBCE) shall adopt the following **Workforce, Environmental, and Environmental Justice Standards for Clean Energy Project Selection Policy** asserting a preference for enhanced workforce, environmental, and environmental justice standards for all EBCE's clean energy programs and projects.

I. DEFINITIONS

1. **Regulatory Value:** The project's anticipated ability to satisfy EBCE's regulatory compliance requirements, such as Resource Adequacy, Renewable Portfolio Standard, integrated resource planning, and other binding orders or directives received from regulatory bodies.

Exhibit A

2. **Market Value:** The project's projected revenues across all relevant day-ahead, real-time and ancillary markets. Market Value shall also assess a project's ability to manage, shift, or arbitrage existing EBCE generation to maximize revenue and renewable energy generation on behalf of EBCE and its customers.
3. **Counterparty Risk:** The risk that a counterparty will fail to perform, or adequately remedy, its obligations. Counterparty Risk is inclusive of Development Risk.
4. **Development Risk:** The risk that the project is unable to obtain interconnection, deliverability, site control, entitlements, financing, or other necessary development milestones required to deliver the project on or ahead of the anticipated online date.
5. **Energy Offtake Agreement:** Includes Power Purchase Agreements, Energy Storage Agreements, Resource Adequacy Only Agreements, or other energy-related products where EBCE does not own, develop, or construct the generation or storage facility. Instead, EBCE's participation in the Project is limited to receiving energy and any applicable attributes at a set price and term.
6. **Journeyperson:** Is a worker who either:
 1. Graduated from a California state-approved apprenticeship program for the applicable occupation or, when located outside California, approved for federal purposes pursuant to apprenticeship regulations adopted by the Secretary of Labor, or
 2. Has at least as many hours of on-the-job experience in an applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the California Division of Apprenticeship Standards.
7. **Local Hire:** A stated preference for project employment opportunities for qualified workers in descending priority:
 1. A resident within the nearest communities in proximity to the project, by radius as reasonably determined on a project-by-project basis;
 - a) Additional preference shall be given, where the radius includes a city, town, or census-designated location within EBCE's service territory, to the workers within those portions of the service territory.
 2. A resident within the county where the project is being constructed;
 3. A resident within EBCE's service territory.

Exhibit A

8. **Targeted Hire Program, also known as Equity Priority Hire:** A pipeline program which creates opportunities for Under-Represented Workers to (a) enter Registered Apprenticeship Programs and (b) obtain work hours needed to successfully complete their apprenticeship, through partnering with a Multi-Craft Core Curriculum (MC3) pre-apprenticeship program or programs, or equivalent industry and union-recognized certificated career training and placement program, that recruits, supports, and prepares Under-Represented Workers to succeed in skilled construction trades apprenticeships.
9. **Under-Represented Worker:** A jobseeker who, at the time of hiring or within the last twelve months, satisfies at least one of the following categories:
 1. Experiencing or at risk of homelessness
 2. Being a custodial single parent
 3. Currently receiving public assistance
 4. Lacking a GED or high school diploma
 5. Having been continuously unemployed or underemployed for the past 6 months
 6. Having been emancipated from the foster care system
 7. Being a veteran of the United States Military
 8. Being a member of a tribal community
 9. Having a previous incarcerated or justice involvement history
 10. At-Risk Youth: a person 18-24 years old who is disconnected from school and/or work
 11. Low income (household income is below the current HUD threshold for Low Income Households in their county of residence)

II. PROJECT SELECTION METHODOLOGY

Projects will be prioritized for selection based on EBCE's evaluation of the criteria set forth below.

- A. Contributions to EBCE's 100% Renewable Energy by 2030 Goal
 1. Assessment and evaluation of proposed projects' operational performance and market economics to ensure selected projects maximize regulatory and market value to EBCE and its customers.
 2. Assessment and evaluation of Counterparty and Development Risk.
 3. Avoids unbundled or Category 3 RECs and non-RPS carbon-free attributes
- B. Workforce and Local Workforce Development

EBCE is committed to stimulating our local economy through, among other measures, supporting Projects committing to apply prevailing wage rates, supporting participants

Exhibit A

and/or graduates of apprenticeship and pre-apprenticeship programs, supporting a local skilled workforce, and to achieve EBCE's local and targeted hire objectives.

1. EBCE will prioritize Energy Offtake Agreements where the developer is committed to:
 - a. Highest priority projects will commit to:
 - i. A multi-trade project labor agreement that incorporates EBCE's Local and Targeted Hire objectives as follows:
 1. A goal of 30% of all project labor hours performed by Local Hires, and;
 2. Participation in a Targeted Hire Program with a goal of 10% of all project hours performed by Under-Represented Worker apprentices.
 - ii. Medium-priority projects will commit to:
 - i. Utilization of prevailing hourly wage and benefit rates as determined by the California Department of Industrial Relations.
 - ii. Utilization of apprentices at the same ratio of apprentice hours to journeyperson hours as required for public works projects. Generally this is one apprentice hour per every 5 hours of journeywork per craft.
 - iii. Demonstrated commitment to Local and Targeted Hire, including utilization of a multi-craft core curriculum (MC3) pre-apprenticeship program, or equivalent industry and union-recognized pre-apprenticeship certification, for outreach, preparation, support and referral of Targeted Hires.
 - c. Low-priority projects would fail to meet II.B.1.a or II.B.1.b above but may demonstrate other commitments to local workforce development.
 2. When considering contractors or developers for EBCE-owned energy generation or storage projects requiring a Large Generator Interconnection Agreement from the California Independent System Operator (currently 20MW and above, but subject to change from time to time), EBCE shall commit to:
 - a. Negotiate a multi-trade project labor agreement that will incorporate EBCE's local and targeted hire objectives as follows:
 - i. A goal of 30% of all project labor hours performed by Local Hires, and;
 - ii. Participation in a Targeted Hire Program with a goal of 10% of all project hours performed by Under-Represented Worker apprentices.
 3. When considering contractors or developers for EBCE-owned energy generation or storage projects requiring a Small Generator Interconnection Agreement from the California Independent System Operator (currently applies to projects under 20MW, but subject to change from time to time), EBCE will commit to:
 - a. Utilization of prevailing hourly wage and benefit rates as determined by the California Department of Industrial Relations.

Exhibit A

- b. Utilization of apprentices at the same ratio of apprentice hours to journeyperson hours as required for public works projects. Generally this is one apprentice hour per every 5 hours of journeywork per craft.
- c. Demonstrated commitment to Local and Targeted Hires.
 - i. A goal of 30% of all project labor hours performed by Local Hires while incenting, through a negotiated contract structure, the contractor or developer to achieve a minimum of 60% of all project labor hours performed by Local Hires, and;
 - ii. Participation in a Targeted Hire Program with a goal of 10% of all labor hours performed by Under-Represented Worker apprentices, while incenting, through a negotiated contract structure, the contractor or developer to achieve the 10% goal.

C. Innovation

EBCE recognizes that reaching 100% Renewable Energy by 2030 will require significant improvements and innovation in battery technologies, renewable baseload, dispatchable renewable resources, and renewable generation technologies, among other opportunities.

- 1. EBCE will prioritize projects that accelerate decarbonization, provide local resiliency, provide EBCE a competitive advantage, and/or reduce costs for EBCE customers while remaining cost competitive with established market alternatives. Innovation will be recognized among projects that:
 - a. Include new or improved technologies or methodologies with a demonstrated potential feasibility;
 - b. Achieve scale for existing technologies to benefit EBCE customers; or
 - c. Reduce or eliminate barriers to adoption of local, distributed, and scaled technologies.

D. Location

EBCE prioritizes projects in the following order:

- 1. Projects located within EBCE's service territory
- 2. Projects located within California.
- 3. Out-of-state projects

E. Environmental Stewardship

EBCE is committed to leading by providing customers with energy that delivers benefits for air, water, and the natural environment while avoiding impacts to important lands, species, and waters.

- 1. EBCE will prioritize projects that:
 - a. Avoid sensitive habitats for any endangered plant or animal species or other environmentally sensitive areas¹ and comply with

¹ Refer to Nature Conservancy's [Power of Place West](#) Report (2022).

Exhibit A

conservation plans such as the Desert Renewable Energy Conservation Plan (DRECP)²;

- b. The developer and local land use authority have established an enforceable development agreement which, in part, sets forth measures to mitigate impacts to sensitive habitat or environmentally sensitive area; then
- c. The developer commits to measurable offset efforts within the vicinity of the proposed project.

F. Benefits Accruing to Underserved Communities

EBCE, supported by the Local Development Business Plan, seeks to deliver economic, environmental, and social benefits to the communities that it serves by providing cleaner electricity at competitive rates, developing local resources that drive new investments, and creating increased demand for high-paying jobs.

EBCE is committed to helping low-income and environmental justice communities overcome barriers to their access to public investments, resources, education, and information about energy service and policy.

EBCE will prioritize projects that:

1. Invest in low-income and environmental justice communities, with additional preference for communities within the EBCE service territory.
2. Demonstrate contact and collaboration with the local community organizations and stakeholder groups representing a broad diversity of demographics and interests, particularly low income and environmental justice communities, to identify and address benefits and impacts of projects and ensure project benefits are communicated and accessible to the local community.
3. Commit to meaningful engagement³ with local communities throughout the entitlement and construction processes to identify and address benefits and impacts of projects and ensure project benefits are communicated and accessible to the local community.

III. EVALUATION, SELECTION AND REPORTING

- A. EBCE will assess and select project proposals in accordance with this Project Selection Methodology and report detailed results of such assessment at the time of the project approval.
- B. EBCE's annual report will compile and report information regarding the impact of the Project Selection Methodology.

² Refer to [Desert Renewable Energy Conservation Plan \(2016\)](#).

³ Meaningful engagement means implementing five recommendations for best practices from [Building a Just Energy Future - A framework for community choice aggregators to power equity and democracy in California, 2020 report by the California Environmental Justice Alliance](#)

Exhibit A

IV. CA COMMUNITY POWER

- A. EBCE's representative to the CA Community Power Board shall advocate for adoption of a CA Community Power Workforce, Environmental, and Environmental Justice Standards for Clean Energy Project Selection Policy consistent with the terms of this resolution.
- B. EBCE's representative to the CA Community Power Board shall advocate to form a public advisory committee, including labor, environmental and equity representatives, to ensure transparency and public engagement in CA Community Power's operations and procurement practices.



Consent Item 5

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: Contracts Entered Into

DATE: October 18, 2023

RECOMMENDATION

Accept the CEO's report on contracts that EBCE has entered into, as required by the Administrative Procurement Policy from September 14, 2023 to October 11, 2023

C-2023-107 Valley Relocation and Storage Move Agreement Moving services from 1999 Harrison Suite 810 to Suite 2300, cost was quoted at \$7,180.

C-2023-108 Teraton Partners (San Francisco) Consulting Services Agreement for load forecasting services through November 11, 2024, with compensation not to exceed \$50,000.

C-2023-109 Keyes and Fox Fifth Amendment to CSA adds \$630,000 in compensation for the fiscal year, extends the term through June 30, 2024, updates the Scope of Work, total compensation is not to exceed \$1,060,000.

C-2023-110 The City of Oakland Charging Station Master Site License Agreement Fifteen year agreement granting EBCE the rights to construct, install and maintain electrical vehicle charging stations and associated infrastructure for public use - 119 charging stalls at 4050 Howe Street, 40 stalls at 3400 Dimond Ave, 81 charging stalls and 3270 Grand Ave.

C-2023-111 Allen Matkins Leck Gamble Mallory & Natsis Termination of License Agreement for 1999 Harrison Suite 810, Terminates License Agreement for 1999 Harrison Street, Suite 810, effective September 30, 2023.

C-2023-114 BCAL LMP Harrison Property c/o Beacon Capital Partners (Boston) Termination of License Agreement for 1999 Harrison Suite 810, Terminates License Agreement for 1999 Harrison Street, Suite 810, effective September 30, 2023.

C-2023-115 City Gateline Environmental Access Agreement provides EBCE and Consultants access to property located at 29 Wildwood Ave, Piedmont for consideration for possible

development of EV charging stations, Owner will be compensated for his time at an hourly rate of \$150 per hour, with total compensation not to exceed \$750.

C-2023-116 EV Realty Electric Vehicle Charging Master Services Agreement 10 year term, serves providing for electric vehicle fleet charging solutions at project sites, yet to be memorialized via Addendum.

C-2023-117 BCAL LMP Harrison Property c/o Beacon Capital Partners (San Francisco)
Termination of License Agreement for 1999 Harrison Suite 810 Terminates License Agreement for 1999 Harrison Street, Suite 810, effective September 30, 2023.



Consent Item 6

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Treasurer’s Report (Informational Item)
DATE: October 18, 2023

Recommendation

Receive report on EBCE’s cash position.

Background and Discussion

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

Account Balances and Holdings as of 9/30/2023

Account	Amount
Internal Operating	\$ 5,062,019
Operating Fund	\$ 125,094,500
Lockbox (Includes \$1,000,000 reserve)	\$ 13,848,241
US Bank	\$ 36,000,000
Money Market	\$ 51,992,783
Insured Cash Sweep	\$ 181,947,191
Wells Fargo	\$ 568,428
CDARS	\$ 50,000,000
Total	\$ 464,513,162

Cash Received by Month into Lockbox Account

July	2023	\$ 74,436,898
August	2023	\$ 95,619,382
September	2023	\$ 79,169,393
Total		\$249,225,673

Outstanding Loan Balances:

US Bank Credit Facility: \$0.00

Customer Delinquency:

As of September 30, 2023

31 - 60 Days: \$ 5,456,453

61 - 90 Days: \$ 3,416,391

91 - 120 Days: \$ 2,391,529

120+ Days: \$ 34,886,786



Consent Item 7

TO: East Bay Community Energy Board of Directors

FROM: Todd Edmister Sr. Director of Regulatory Affairs and Deputy General Counsel

SUBJECT: Adopting Department of Energy Conflict of Interest Policy

DATE: October 18, 2023

Recommendation

Approve a Resolution to adopt the Department of Energy (DOE) Conflict of Interest (COI) Policy compliant with regulations governing recipients of federal funds administered by the DOE.

EBCE is receiving federal funding, administered by the DOE, for resilience projects. As part of the funding process EBCE must certify compliance with DOE conflict of interest rules, which requires adoption of a DOE-compliant COI policy. The Policy proposed here complies with DOE's requirements. The proposed policy complements and does not supersede EBCE's existing state-mandated COI Policy.

Background and Discussion

Federal grants and funding agreements often come with legal and policy requirements that recipients must adhere to, including adopting and implementing specific policies and procedures. Non-compliance with these requirements can result in the termination of funding or the need to refund monies received.

The DOE is administering the federal funding that EBCE is receiving for resilience projects. As part of the funding process, DOE requires EBCE to certify compliance with DOE conflict of interest rules. Specifically, the DOE requires that recipients of DOE-administered federal funds "(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with the DOE Interim COI Policy, and make such policy available via a publicly accessible website."

The DOE's COI Policy bars individuals involved in the administration of federal funds from making decisions that could benefit them personally or financially. It is also intended to avoid perceptions of bias or unfairness in the allocation of funds or the selection of contractors and vendors.

The default DOE rule is for funding recipients to adopt DOE's own COI Policy. That is what staff proposes EBCE do here. The Policy proposed for adoption is the DOE-drafted Policy. Adopting it (and subsequently posting it to EBCE's website) ensures compliance with the DOE rule quoted above.

EBCE has an existing state-mandated COI policy, and the DOE offers an option for recipients to use their own policy if it "includes standards that are more stringent than [DOE's] Policy (e.g., that require a more extensive disclosure of financial interests), the non-Federal entity shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the DOE program office in accordance with the non-Federal entity's own standards and within the timeframe prescribed by this Policy."¹ However, there are numerous differences in detail between the EBCE Policy and DOE's that prevent EBCE from asserting that EBCE's COI Policy is "more stringent" than DOE's. DOE's policy applies to a much broader class of persons ("Investigators" vs. a small set of defined positions) than EBCE's. Further, DOE's policy defines conflicts of interest more broadly than EBCE's. Consequently, staff recommends adoption of the DOE Policy in addition to EBCE's state-mandated policy, rather than attempting to rely on the existing policy to show federal compliance.

Fiscal Impact

Adopting this Policy comes at no cost to the agency and on the contrary, ensures that EBCE is eligible to receive certain DOE funding.

Committee Recommendation

This item will be presented to the Marketing, Regulatory and Legislative Subcommittee on Friday, October 13th.

Attachments

- A. Resolution
- B. Policy

¹ <https://www.energy.gov/sites/default/files/2021-12/Interim%20COI%20Policy%20FAL2022-02%20to%20SPEs.pdf>

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING DEPARTMENT OF ENERGY CONFLICT OF INTEREST 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. The city of Lathrop, located in San Joaquin County, was added as a member to EBCE and party to the JPA in October of 2023.

WHEREAS EBCE is receiving federal funding, administered by the Department of Energy (“DOE”), for resilience projects.

WHEREAS As part of the funding process EBCE must certify compliance with DOE conflict of interest (“COI”) rules, which require adoption of a DOE-compliant COI Policy.

WHEREAS The COI Policy proposed here complies with DOE’s requirements.

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

Section 1. The DOE COI Policy attached hereto is hereby adopted.

Section 2. Agency staff are hereby directed to comply with the DOE COI policy to the extent legally applicable to any federal funds received by the agency and administered by staff.

Section 3. The COI Policy shall be made publicly available on EBCE’s website

ADOPTED AND APPROVED this 18th day of October, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Department of Energy Conflict of Interest Policy

Policy Number: 18

Approval Date: October 18, 2023

Agenda Item: Item XX

Approved by Resolution: R-2023-xx

{POLICY BEGINS ON NEXT PAGE}



APPENDIX 1

DEPARTMENT OF ENERGY Interim Conflict of Interest Policy for Financial Assistance

I. Purpose.

This DOE Interim Conflict of Interest Policy for Financial Assistance (“DOE Interim COI Policy” or “Policy”) establishes standards that provide a reasonable expectation that the design, conduct, and reporting of projects wholly or in part funded under Department of Energy (DOE) financial assistance awards (e.g., a grant, cooperative agreement, or technology investment agreement) will be free from bias resulting from financial conflicts of interest or organizational conflicts of interest.

II. Applicability.

This DOE Interim COI Policy is applicable to each non-Federal entity that is applying for or that receives a DOE financial assistance award and, through the implementation of this policy by the non-Federal entity, to each Investigator who is planning to participate in or is participating in the project funded wholly or in part under the DOE financial assistance award, and to each non-federal entity sub-recipient under the award. The DOE Interim COI Policy does not apply to Office of Indian Energy and Phase I Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) applications and awards. In those few cases where an individual, as opposed to a non-Federal entity, is applying for or receives DOE financial assistance funding for a project, DOE program offices will make case-by-case determinations on the steps to be taken, consistent with this Policy, to provide a reasonable expectation that the design, conduct, and reporting of the project will be free from bias resulting from a financial conflict of interest of the individual or organizational conflict of interest.

III. Definitions.

As used in this Policy:

Award, financial assistance award or Federal award means the same as the definition provided in 2 CFR 200.1 for Federal award.

Contracting Activity means an organizational element that has the authority to award and administer contracting and financial assistance instruments.

Disclosure of significant financial interests means an individual’s disclosure of significant financial interests to a non-Federal entity.

DOE means the U.S. Department of Energy, the National Nuclear Security Administration (NNSA), and any components of the DOE to which the authority involved may be delegated.

DOE program office means the organizational unit of DOE, led by an officer of the Department who has been appointed by the President by and with the advice and consent of the Senate, that funds and/or manages the awards subject to this Policy. For purposes of this Policy, the term *DOE program office* includes the organization responsible for executing program management functions; the cognizant contracting activity; and the field elements in safety and health, administrative, management, and technical areas.

Financial conflict of interest (FCOI) means a situation in which an Investigator or the Investigator's spouse or dependent children has a significant financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting or funding of a project.

FCOI report means a non-Federal entity's report of a financial conflict of interest to the DOE program office.

Financial interest means anything of monetary value, whether or not the value is readily ascertainable.

Institution of Higher Education means the same as the definition provided at 20 U.S.C. § 1001(a).

Investigator means the principal Investigator (PI) and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. DOE program offices have the discretion to expand the definition to include also any person who *participates* in the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. Such expansion will be specified in the applicable funding opportunity announcement and/or terms and conditions of the financial assistance award.

Investigator's non-Federal entity responsibilities means an Investigator's professional responsibilities on behalf of the non-Federal entity, and as defined by the non-Federal entity in its policy on financial conflicts of interest, which may include: activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels such as Institutional Review Boards or Data and Safety Monitoring Boards.

Manage means taking action to address a financial conflict of interest, which can include mitigating or eliminating the conflict of interest, to ensure, to the extent possible, that the purpose, design, conduct, and reporting of a project will be free from bias.

Non-Federal entity means a State, local government, Indian tribe, Institution of Higher Education, nonprofit organization, or for-profit organization that carries out a DOE award as a recipient or subrecipient.

Non-Federal entity's designated official means the individual designated by the non-Federal entity with the authority and responsibility to act on behalf of the non-Federal entity to ensure compliance with the DOE Interim COI Policy.

Organizational conflict of interest means a situation where because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. 2 CFR 200.318(c)(2).

Potential conflict of interest exists when an impartial observer reasonably believes that actual or apparent past, present, or currently planned interests could constitute a conflict of interest with a project funded under a DOE award.

Principal Investigator (PI) means a principal investigator of a project funded under a DOE financial assistance award; PI is included in the definitions of *senior/key personnel* and *Investigator*.

Project means the interdependent activities funded wholly or in part under the DOE financial assistance award. A project has a defined start and end point with objectives described in an application or in an approved scope that, when attained, signify completion and achievement of a specific goal, and creation of a unique product, service, or result. For awards that include recipient cost share as part of the approved budget, activities funded with that recipient cost share are included.

Recipient means an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Senior/key personnel means the PI; any other person who significantly influences the design, conduct, or reporting of a project funded under a DOE award; and any other person identified as senior/key personnel by the non-Federal entity in the application for financial assistance, approved budget, progress report, or any other report submitted to the DOE by the non-Federal entity under this Policy.

Significant financial interest means:

(1) A financial interest consisting of one or more of the following interests of the Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's non-Federal entity responsibilities:

(i) With regard to any foreign or domestic publicly traded entity, a *significant financial interest* exists if the value of any remuneration received from the entity in the twelve months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds \$5,000. For purposes of this definition, remuneration includes salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value;

(ii) With regard to any foreign or domestic non-publicly traded entity, a *significant financial interest* exists if the value of any remuneration, not otherwise disclosed as current, pending, or other support, received from the entity in the twelve months preceding the disclosure, when aggregated, exceeds \$5,000, or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest);

(iii) Intellectual property rights and interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests.

(2) Investigators also must disclose the occurrence of any reimbursed or sponsored travel (*i.e.*, that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value may not be readily available) related to their institutional responsibilities that is not otherwise disclosed in current and pending or other support disclosures, provided that this disclosure requirement does not apply to travel that is reimbursed or sponsored by a Federal, state, or local government agency of the United States; a domestic Institution of Higher Education; or a domestic research institute that is affiliated with a domestic Institution of Higher Education. The non-Federal entity's FCOI policy will specify the details of this disclosure, which will include, at a minimum, the purpose of the trip, the identity of the sponsor/organizer, the destination, and the duration. In accordance with the non-Federal entity's FCOI policy, the non-Federal entity official(s) will determine if further information is needed, including a determination or disclosure of monetary value, in order to determine whether the travel constitutes a FCOI with the project funded under the DOE award.

(3) The term *significant financial interest* does not include the following types of financial interests: salary, royalties, or other remuneration paid by the non-Federal entity to the Investigator if the Investigator is currently employed or otherwise appointed by the non-Federal entity, including

intellectual property rights assigned to the non-Federal entity and agreements to share in royalties related to such rights; any ownership interest in the non-Federal entity held by the Investigator, if the non-Federal entity is a commercial or for-profit organization; income from investment vehicles, such as mutual funds and retirement accounts, as long as the Investigator does not directly control the investment decisions made in these vehicles; income from seminars, lectures, or teaching engagements sponsored by a Federal, state, or local government agency of the United States, a domestic Institution of Higher Education, or a domestic research institute that is affiliated with a domestic Institution of Higher Education; or income from service on advisory committees or review panels for a Federal, state, or local government agency of the United States, a domestic Institution of Higher Education, or a domestic research institute that is affiliated with a domestic Institution of Higher Education.

Small Business Innovation Research (SBIR) Program and *Small Business Technology Transfer (STTR) Program* mean the extramural research programs for small businesses that are run by the DOE Office of Science and the Advanced Research Projects Agency-Energy and certain other Federal agencies under Public Law 97-219, the Small Business Innovation Development Act, as amended, and Public Law 102-564.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award, but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

IV. Responsibilities of non-Federal entities regarding Investigator financial conflicts of interest.

Each non-Federal entity shall:

(a) Maintain an up-to-date, written, enforced policy on financial conflicts of interest that complies with the DOE Interim COI Policy, and make such policy available via a publicly accessible website. If the non-Federal entity does not have any current presence on a publicly accessible website (and only in those cases), the non-Federal entity shall make its written policy available to any requestor within five business days of a request. If, however, the non-Federal entity acquires a presence on a publicly accessible website during the time of the DOE award, the requirement to post the information on that website will apply within thirty calendar days of the acquisition of the publicly accessible website. If a non-Federal entity maintains a policy on financial conflicts of interest that includes standards that are more stringent than this Policy (e.g., that require a more extensive disclosure of financial interests), the non-Federal entity shall adhere to its policy and shall provide FCOI reports regarding identified financial conflicts of interest to the DOE program office in accordance with the non-Federal entity's own standards and within the timeframe prescribed by this Policy.

(b) Inform each Investigator of the non-Federal entity's policy on financial conflicts of interest, the Investigator's responsibilities regarding disclosure of significant financial interests, and of DOE's Interim COI Policy; and require each Investigator to complete training regarding the same prior to engaging in projects related to any DOE financial assistance award and at least every four years, and immediately when any of the following circumstances apply:

- (1) The non-Federal entity revises its financial conflict of interest policies or procedures in any manner that affects the requirements of Investigators;

(2) An Investigator is new to a non-Federal entity; or

(3) A non-Federal entity finds that an Investigator is not in compliance with the non-Federal entity's financial conflict of interest policy or management plan.

(c) If the non-Federal entity carries out the DOE award through or with the assistance of one or more subrecipient, the recipient non-Federal entity must take reasonable steps to ensure that each subrecipient Investigator complies with this Policy by:

(1) Incorporating as part of a written agreement with the subrecipient terms that establish whether the financial conflict of interest policy of the recipient non-Federal entity or that of the subrecipient will apply to the subrecipient's Investigators.

(i) If the subrecipient's Investigators must comply with the subrecipient's financial conflict of interest policy, the subrecipient shall certify as part of the agreement referenced above that its policy complies with this DOE Interim COI Policy and the subrecipient shall make such policy available via a publicly accessible website. If the subrecipient does not have any current presence on a publicly accessible website (and only in those cases), the subrecipient shall make its written policy available to any requestor within five business days of a request. If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the financial conflict of interest policy of the recipient non-Federal entity for disclosing financial conflicts of interest;

(ii) Additionally, if the subrecipient's Investigators must comply with the subrecipient's financial conflict of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to report all identified financial conflicts of interest to the recipient non-Federal entity. Such time period(s) shall be sufficient to enable the recipient non-Federal entity to provide timely FCOI reports, as necessary, to DOE, as required by this DOE Interim COI Policy;

(iii) Alternatively, if the subrecipient's Investigators must comply with the recipient non-Federal entity's financial conflict of interest policy, the agreement referenced above shall specify time period(s) for the subrecipient to submit all Investigator disclosures of significant financial interests to the recipient non-Federal entity. Such time period(s) shall be sufficient to enable the recipient non-Federal entity to comply timely with its review, management, and reporting obligations under this DOE Interim COI Policy.

(2) Providing FCOI reports to the DOE program office regarding all financial conflict of interest of all subrecipient Investigators consistent with this Policy, *i.e.*, prior to the expenditure of funds and within sixty days of any subsequently identified FCOI.

(d) Designate a non-Federal entity official(s) to solicit and review disclosures of significant financial interests from each Investigator who is planning to participate in, or is participating in, the project funded under a DOE award, including disclosures of subrecipient investigators pursuant to paragraph (c) of this section.

(e) Require that:

- (1) Each Investigator who is planning to participate in the DOE award disclose to the non-Federal entity's designated official(s) the Investigator's significant financial interests (and those of the Investigator's spouse and dependent children) no later than the time of application for the DOE award. In the event a non-Federal entity seeks to add an Investigator after the time of application, the non-Federal entity must require the Investigator make such disclosures prior to participating in a project funded under a DOE award.
- (2) Each Investigator who is participating in the DOE award to submit an updated disclosure of significant financial interests at least annually, in accordance with the specific time period prescribed by the non-Federal entity, during the period of the award. Such disclosure shall include any information that was not disclosed initially to the non-Federal entity pursuant to paragraph (e)(1) of this section, or in a subsequent disclosure of significant financial interests (e.g., any financial conflict of interest identified on a DOE award that was transferred from another non-Federal entity), and shall include updated information regarding any previously disclosed significant financial interest (e.g., the updated value of a previously disclosed equity interest).
- (3) Each Investigator who is participating in the DOE award to submit an updated disclosure of significant financial interests within thirty days of discovering or acquiring (e.g., through purchase, marriage, or inheritance) a new significant financial interest.
- (4) Each disclosure and updated disclosure be signed and dated by the Investigator and include a certification statement that reads:

I understand that this Disclosure is required to obtain funding from the U.S. Government. I, [Full Name and Title], certify to the best of my knowledge and belief that the information contained in this Disclosure Statement is true, complete, and accurate. I understand that any false, fictitious, or fraudulent information, misrepresentations, half-truths, or omissions of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 1001 and 287, and 31 U.S.C. 3729-3730 and 3801-3812). I further understand and agree that (1) the statements and representations made herein are material to U.S. Government's funding decision, and (2) I have a responsibility to update the disclosures during the period of performance of the award should circumstances change which impact the responses provided above.

(f) Provide guidelines consistent with this Policy for the designated non-Federal entity's designated official(s) to determine whether an Investigator's significant financial interest is related to a project funded under a DOE award and, if so related, whether the significant financial interest is a financial conflict of interest. An Investigator's significant financial interest is related to a project funded under a DOE award when the non-Federal entity, through its designated official(s), reasonably determines that the significant financial interest could be affected by the project, could affect the project, is in an entity whose financial interest could affect the project, or is in an entity whose financial interest could be affected by the project. The non-Federal entity may involve the Investigator in the designated official(s)'s determination of whether a significant financial interest is related to the project funded under the DOE award. A financial conflict of interest exists when the non-Federal entity, through its designated official(s), reasonably determines that the significant financial

interest could directly and significantly affect the purpose, design, conduct, or reporting of the project funded under a DOE award.

(g) Take such actions as necessary to manage financial conflicts of interest, including any financial conflicts of a subrecipient Investigator pursuant to paragraph (c) of this section. Management of an identified financial conflict of interest requires development and implementation of a management plan and, if necessary, a retrospective review and a mitigation report pursuant to Section V(a).

(h) Provide initial and ongoing FCOI reports to DOE as required pursuant to Section V(b).

(i) Maintain records relating to all Investigator disclosures of financial interests and the non-Federal entity's review of and response to such disclosures (whether or not a disclosure resulted in the non-Federal entity's determination of a financial conflict of interest) and all actions under the non-Federal entity's policy or retrospective review, if applicable, for the time period specified in 2 CFR 200.334 or, where applicable, from other dates specified in the individual award terms and conditions.

(j) Establish adequate enforcement mechanisms and provide for employee sanctions or other administrative actions to ensure Investigator compliance as appropriate.

(k) Certify, prior to award, that the non-Federal entity:

(1) Has in effect an up-to-date, written, and enforced administrative process to identify and manage conflicts of interest with respect to all projects for which financial assistance funding is sought or received from DOE;

(2) Shall promote and enforce Investigator compliance with this Policy's requirements including those pertaining to disclosure of significant financial interests;

(3) Shall manage financial conflicts of interest and provide initial and ongoing FCOI reports to DOE consistent with this Policy;

(4) Agrees to make information available, promptly upon request, to DOE relating to any Investigator disclosure of financial interests and the non-Federal entity's review of, and response to, such disclosure, whether or not the disclosure resulted in the non-Federal entity's determination of a financial conflict of interest; and

(5) Shall fully comply with the requirements of this Policy.

V. Management and reporting of financial conflicts of interest.

(a) Management of financial conflicts of interest.

(1) Prior to the non-Federal entity's expenditure of any funds under a DOE award, the designated official(s) of a non-Federal entity shall, consistent with Section IV(f): review all Investigator disclosures of significant financial interests; determine whether any of the disclosures relate to the project funded under the DOE award; determine whether a financial conflict of interest exists; and, if so, develop and implement a management plan that shall specify the actions that have been, and shall be, taken to manage such financial conflict of interest. A nonexclusive list of conditions or restrictions, one or more of which might be imposed to manage a financial conflict of interest, includes:

- (i) Public disclosure of the financial conflict of interest (e.g., when presenting or publishing the project);
 - (ii) For projects involving human subjects, disclosure of financial conflicts of interest directly to participants;
 - (iii) Appointment of an independent monitor or oversight committee capable of taking measures to protect the purpose, design, conduct, and reporting of the project against bias resulting from the financial conflict of interest;
 - (iv) Modification of the project plan;
 - (v) Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the project;
 - (vi) Reduction or elimination of the financial interest (e.g., sale of an equity interest); or
 - (vii) Severance of relationship(s) that create financial conflicts of interest.
- (2) Whenever, in the course of an ongoing project funded under a DOE award, an Investigator who is new to participating in the project discloses a significant financial interest or an existing Investigator discloses a new significant financial interest to the non-Federal entity, the designated official(s) of the non-Federal entity shall, within sixty days: review the disclosure; determine whether it is related to the project funded under the DOE award; determine whether a financial conflict of interest exists; and, if so, implement, on at least an interim basis, a management plan that shall specify the actions that have been, and will be, taken to manage such financial conflict of interest. Depending on the nature of the significant financial interest, a non-Federal entity may determine that additional interim measures are necessary with regard to the Investigator's participation in the project funded under the DOE award between the date of disclosure and the completion of the non-Federal entity's review.
- (3) Whenever a non-Federal entity identifies a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed by the non-Federal entity during an ongoing project funded under a DOE award (e.g., was not timely reviewed or reported by a subrecipient), the designated official(s) shall, within sixty days: review the significant financial interest; determine whether it is related to the project funded under a DOE award; determine whether a financial conflict of interest exists; and, if so:
- (i) Implement, on at least an interim basis, a management plan that shall specify the actions that have been and will be taken to manage such financial conflict of interest going forward;
 - (ii)(A) In addition, whenever a financial conflict of interest is not identified or managed in a timely manner, including failure by the Investigator to disclose a significant financial interest that is determined by the non-Federal entity to constitute a financial conflict of interest; failure by the non-Federal entity to review or manage such a financial conflict of interest; or failure by the Investigator to comply with a financial conflict of interest management plan, the non-Federal entity shall, within 120 days of the non-Federal entity's determination of noncompliance, complete a retrospective review of the Investigator's activities and the project funded under the DOE award to determine whether any project activity, or portion thereof, conducted during the time period of the noncompliance, was biased in the purpose, design,

conduct, or reporting of such project.

(B) The non-Federal entity is required to document the retrospective review; such documentation shall include, but not necessarily be limited to, all of the following key elements:

- (1) DOE award number;
- (2) Project title;
- (3) PI or contact PI if a multiple PI model is used;
- (4) Name of the Investigator with the FCOI;
- (5) Name of the entity with which the Investigator has a financial conflict of interest;
- (6) Reason(s) for the retrospective review;
- (7) Detailed methodology used for the retrospective review (e.g., methodology of the review process, composition of the review panel, documents reviewed);
- (8) Findings of the review; and
- (9) Conclusions of the review.

(iii) Based on the results of the retrospective review, if appropriate, the non-Federal entity shall update the previously submitted FCOI report, specifying the actions that will be taken to manage the financial conflict of interest going forward. If bias is found, the non-Federal entity is required to notify the DOE program office promptly and submit a mitigation report to the DOE program office. The mitigation report must include, at a minimum, the key elements documented in the retrospective review above, a description of the impact of the bias on the project, and the non-Federal entity's plan of action or actions taken to eliminate or mitigate the effect of the bias (e.g., impact on the project; extent of harm done, including any qualitative and quantitative data to support any actual or future harm; analysis of whether the project is salvageable). Thereafter, the non-Federal entity will submit FCOI reports annually, as specified elsewhere in this Policy. DOE program offices may, by language in Funding Opportunity Announcements (FOAs) or by term and condition of award, require more frequent reporting for awards. Depending on the nature of the financial conflict of interest, a non-Federal entity may determine that additional interim measures are necessary with regard to the Investigator's participation in the project funded under the DOE award between the date that the conflict of interest or the Investigator's noncompliance is determined and the completion of the non-Federal entity's retrospective review.

(4) Whenever a non-Federal entity implements a management plan pursuant to this Policy, the non-Federal entity shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the DOE award.

(5)(i) Prior to the non-Federal entity's expenditure of any funds under a DOE award, the non-Federal entity shall ensure public accessibility, via a publicly accessible website or written response to any

requestor within five business days of a request, of information concerning any significant financial interest disclosed to the non-Federal entity that meets the following three criteria:

(A) The significant financial interest is still held by the senior/key personnel as defined by this Policy;

(B) The non-Federal entity determined that the significant financial interest is related to the project funded under the DOE award; and

(C) The non-Federal entity determined that the significant financial interest is a financial conflict of interest.

(ii) The information that the non-Federal entity makes available via a publicly accessible website or written response to any requestor within five business days of a request, shall include, at a minimum, the following: the Investigator's name; the Investigator's title and role with respect to the project; the name of the entity in which the significant financial interest is held; the nature of the significant financial interest; and the approximate dollar value of the significant financial interest (dollar ranges are permissible: \$0-\$4,999; \$5,000-\$9,999; \$10,000-\$19,999; amounts between \$20,000-\$100,000 by increments of \$20,000; amounts above \$100,000 by increments of \$50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value.

(iii)(A) If the non-Federal entity uses a publicly accessible website for the purposes of this subsection, the information that the non-Federal entity posts shall be updated at least annually. In addition, the non-Federal entity shall update the website within sixty days of the non-Federal entity's receipt or identification of information concerning any additional significant financial interest of the senior/key personnel for the project funded under the DOE award that was not previously disclosed, or upon the disclosure of a significant financial interest of senior/key personnel new to the project, if the non-Federal entity determines that the significant financial interest is related to the project and is a financial conflict of interest. The website shall note that the information provided is current as of the date listed and is subject to updates, on at least an annual basis and within sixty days of the non-Federal entity's identification of a new financial conflict of interest.

(B) If the non-Federal entity responds to written requests for the purposes of this subsection, the non-Federal entity will note in its written response that the information provided is current as of the date of the correspondence and is subject to updates, on at least an annual basis and within sixty days of the non-Federal entity's identification of a new financial conflict of interest, which should be requested subsequently by the requestor.

(iv) Information concerning the significant financial interests of an individual subject to paragraph (a)(5) of this section shall remain available, for responses to written requests or for posting via the non-Federal entity's publicly accessible website, for at least three years from the date that the information was most recently updated.

(6) In addition to the types of financial conflicts of interest as defined in this Policy that must be managed pursuant to this section, a non-Federal entity may require the management of other conflicts

of interest in its policy on financial conflicts of interest, as the non-Federal entity deems appropriate.

(b) Reporting of financial conflicts of interest.

(1) Prior to the non-Federal entity's expenditure of any funds under a DOE-funded project, the non-Federal entity shall provide to the DOE program office a FCOI report regarding any Investigator's unmanaged or unmanageable significant financial interest found by the non-Federal entity to be conflicting. DOE program offices may, by language in FOAs or term and condition of award, require a non-Federal entity's FCOI report also list any Investigator's significant financial interest found by the non-Federal entity to be conflicting and addressed by a management plan in accordance with this Policy. The non-Federal entity shall provide, on request, FCOI reports and supporting documentation about any significant financial interest found by the non-Federal entity to be conflicting, regardless of whether or not the conflict has been managed, mitigated, or eliminated. In cases in which the non-Federal entity identifies a financial conflict of interest and eliminates it prior to the expenditure of DOE-awarded funds, the non-Federal entity need not submit a FCOI report to the DOE program office.

(2) For any significant financial interest that the non-Federal entity identifies as conflicting subsequent to the non-Federal entity's initial FCOI report during an ongoing project funded under a DOE award (e.g., upon the participation of an Investigator who is new to the project), the non-Federal entity shall:

(i) [Applicable when a DOE program office requires the non-Federal entity to include only unmanaged or unmanageable Investigator FCOIs in the FCOI Report] Provide to DOE within sixty days an FCOI report regarding the financial conflict of interest if the non-Federal entity's designated official determines that the FCOI is unmanageable. Pursuant to paragraph (a)(3)(ii) of this section, where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed or managed by the non-Federal entity (e.g., was not timely reviewed or reported by a subrecipient), the non-Federal entity also is required to complete a retrospective review to determine whether any project funded under a DOE award or portion thereof conducted prior to the identification of the financial conflict of interest was biased in the purpose, design, conduct, or reporting of such project. Additionally, pursuant to paragraph (a)(3)(iii) of this section, if bias is found, the non-Federal entity is required to notify the DOE program office promptly and submit a mitigation report to the DOE program office.

(ii) [Applicable when a DOE program office requires the non-Federal entity to include all Investigator FCOIs – including managed and unmanaged/unmanageable FCOIs – in the FCOI Report] Provide to DOE within sixty days, an FCOI report regarding the financial conflict of interest and ensure that the non-Federal entity has implemented a management plan in accordance with this Policy. Pursuant to paragraph (a)(3)(ii) of this section, where such FCOI report involves a significant financial interest that was not disclosed timely by an Investigator or, for whatever reason, was not previously reviewed or managed by the non-Federal entity (e.g., was not timely reviewed or reported by a subrecipient), the non-Federal entity also is required to complete a retrospective review to determine whether any project funded under a DOE award, or portion thereof, conducted prior to the identification and management of the

financial conflict of interest was biased in the purpose, design, conduct, or reporting of such project. Additionally, pursuant to paragraph (a)(3)(iii) of this section, if bias is found, the non-Federal entity is required to notify the DOE program office promptly and submit a mitigation report to the DOE program office.

(3) Any FCOI report required under paragraphs (b)(1) or (b)(2) of this section shall include sufficient information to enable DOE to understand the nature and extent of the financial conflict, and to assess the appropriateness of the non-Federal entity's management plan. Elements of the FCOI report shall include, but are not necessarily limited to the following:

- (i) DOE award number;
- (ii) PI or Contact PI if a multiple PI model is used;
- (iii) Name of the Investigator with the financial conflict of interest;
- (iv) Name of the entity with which the Investigator has a financial conflict of interest;
- (v) Nature of any applicable financial interest (e.g., equity, consulting fee, travel reimbursement, honorarium) and/or applicable external relationships or activities;
- (vi) Value of any applicable financial interest (dollar ranges are permissible: \$0-\$4,999; \$5,000-\$9,999; \$10,000-\$19,999; amounts between \$20,000-\$100,000 by increments of \$20,000; amounts above \$100,000 by increments of \$50,000), or a statement that the interest is one whose value cannot be readily determined through reference to public prices or other reasonable measures of fair market value;
- (vii) A description of how the financial interest relates to the project funded under a DOE award and the basis for the non-Federal entity's determination that there is a conflict with such project; and
- (viii) [Applicable when a DOE program office requires the non-Federal entity to include all Investigator FCOIs – including managed and unmanaged/unmanageable FCOIs – in the FCOI Report] A description of the key elements of the non-Federal entity's management plan, including:
 - (A) Role and principal duties of the conflicted Investigator in the project;
 - (B) Conditions of the management plan;
 - (C) How the management plan is designed to safeguard objectivity in the project;
 - (D) Confirmation of the Investigator's agreement to the management plan;
 - (E) How the management plan will be monitored to ensure Investigator compliance; and
 - (F) Other information as needed.

(4) For any financial conflict of interest previously reported by the non-Federal entity with regard to an ongoing project funded under a DOE award, the non-Federal entity shall provide DOE with an annual FCOI report that addresses the status of the financial conflict of interest and, if applicable, any changes to the management plan for the duration of the DOE award. The annual FCOI report shall

specify whether the financial conflict is still being managed or if it remains unmanaged/unmanageable. Alternatively, the annual FCOI report shall explain why the financial conflict no longer exists. The non-Federal entity shall provide annual FCOI reports to DOE for the duration of the project period (including extensions with or without funds) in the time and manner required by term and condition of award.

(5) In addition to the annual FCOI report, DOE may require a non-Federal entity to routinely submit all or some Investigator disclosures of financial interests. Circumstances when DOE may require a non-Federal entity to submit all or some of such Investigator disclosures include but are not limited to:

- (i) As part of monitoring the non-Federal entity's compliance with this Policy;
- (ii) Bankruptcy of the non-Federal entity;
- (iii) Other legal winding down of the non-Federal entity;
- (iv) Acquisition of the non-Federal entity by a foreign entity, where "acquisition" includes a foreign entity obtaining a controlling interest in the non-Federal entity; or
- (v) As otherwise set forth in 2 CFR 200, as amended by 2 CFR 910.

(6) In addition to the types of financial conflicts of interest as defined in this Policy that must be reported pursuant to this section, a non-Federal entity may require the reporting of other conflicts of interest in its policy, as the non-Federal entity deems appropriate.

VI. Responsibilities of non-Federal entities regarding organizational conflicts of interest.

(a) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must maintain written standards of conduct covering organizational conflicts of interest. 2 CFR 200.318(c)(2).

(b) The existence of written policies or procedures requiring that certain procurements or transactions be made with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe is an effective manner of mitigating an organizational conflict of interest.

(c) The non-Federal entity must disclose in writing any potential or actual organizational conflict of interest to the DOE program office. The non-Federal entity must provide the disclosure to DOE in an application for financial assistance or prior to engaging in a procurement or transaction using DOE funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. The elements of the disclosure shall include, but are not limited to the following:

- (i) The name, address, and website (as applicable) of the entity that presents a potential or actual organizational conflict of interest;
- (ii) The relationship between the non-Federal entity and the entity at issue;
- (iii) The nature of the anticipated procurement or other transaction with the parent, affiliate, or subsidiary organization; the anticipated value of the procurement or other transaction; and the basis

for making the procurement or other transaction with a parent, affiliate, or subsidiary organization;

(iv) The basis for the non-Federal entity's determination regarding the existence of an organizational conflict of interest; and

(v) How the non-Federal entity will avoid, neutralize, or mitigate the organizational conflict of interest.

(d) If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the anticipated procurement or other transaction using DOE funds may not be made. Where there is an organizational conflict of interest that cannot be avoided, neutralized, or mitigated, the non-Federal entity must procure goods and services from other sources when using DOE funds.

VII. Remedies.

(a) If the failure of an Investigator to comply with a non-Federal entity's financial conflict of interest policy or a management plan appears to have biased the purpose, design, conduct, or reporting of the project funded under a DOE award, the non-Federal entity shall promptly notify the DOE of the failure to comply and of the corrective action taken or to be taken. DOE will consider the situation and, as necessary, take appropriate action, or refer the matter to the non-Federal entity for further action, which may include directions to the non-Federal entity on how to maintain appropriate objectivity in the project funded under the DOE award. DOE may, for example, require non-Federal entities employing such an Investigator to enforce any applicable corrective actions prior to a DOE award or when the transfer of a DOE award involves such an Investigator.

(b) DOE may inquire, at any time before, during, or after an award, into any Investigator's disclosure of financial interests and the non-Federal entity's review (including any retrospective review) of and response to such disclosure, regardless of whether the disclosure resulted in the non-Federal entity's determination of a financial conflict of interest. A non-Federal entity is required to submit or permit on-site review of, all records pertinent to compliance with this Policy. To the extent permitted by law, DOE will maintain the confidentiality of all records of financial interests. Based on its review of records or other information that may be available, the DOE program office may decide that a particular financial conflict of interest will bias the objectivity of or adversely impact the project funded under the DOE award to such an extent that further corrective action is needed or that the non-Federal entity has not managed the financial conflict of interest in accordance with this Policy. The DOE may determine that the imposition of specific award conditions under 2 CFR 200.208 is necessary. The DOE may also take one or more the actions specified under 2 CFR 200.339, as appropriate in the circumstances.

(c) If a non-Federal entity fails to disclose an organizational conflict of interest to DOE prior to engaging in a procurement or transaction using DOE funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the costs of such procurement or transaction may be disallowed. If a non-Federal entity fails to disclose an organizational conflict of interest to DOE prior to engaging in a procurement or transaction using DOE funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, and the organizational conflict of interest is not avoided, neutralized, or managed, DOE may determine that imposition of specific award conditions under 2 CFR 200.208 is necessary. DOE may also take one or more actions specified under 2 CFR 200.339, as appropriate in the circumstances.

(d) Any false, fictitious, or fraudulent information, or the omission of any material fact, on a disclosure, report, or other record required under this Policy may be subject to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Sections 287 and 1001; and Title 31, 3729-3730 and 3801-3812).



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Dan Lieberman, Director of Marketing

SUBJECT: Consulting Services Agreement with Project6 Design, Inc.

DATE: October 18, 2023

Recommendation

Approve a Resolution authorizing the CEO to negotiate and execute a Consulting Services Agreement with Project6 Design, Inc., a Berkeley-based, Small Business Certified S-Corporation, to provide website design and development services including strategy, design, development, testing, and integration. The term of the Agreement will be through June 30, 2024, with compensation not-to-exceed an amount of \$250,000.

Background and Discussion

EBCE staff are planning to add new functionality to our website to allow for more robust online customer engagement. In anticipation, on August 1, 2023, EBCE issued a Request for Proposal for East Bay Community Energy Authority Website Redesign. Twelve firms responded with proposals, which were reviewed and scored by a team of EBCE marketing and IT staff. The top five scoring firms were interviewed, and follow-up interviews were performed with the top two firms. Project6 was ultimately selected for their excellent portfolio of work with similar clients, exceptional design and technical skills, and reasonable pricing. They are an award-winning, Small Business Certified, Green Business Certified local business based in Berkeley.

Fiscal Impact

This project was included in the current Fiscal Year budget and the suggested contact amount is less than the budgeted amount.

Attachments

- A. Resolution

RESOLUTION NO. R-2023-XX
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO NEGOTIATE A CONSULTING
SERVICES AGREEMENT WITH PROJECT6 DESIGN, INC.

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. The city of Lathrop, located in San Joaquin County, was added as a member to EBCE and party to the JPA in October of 2023.

WHEREAS EBCE staff are planning to add new functionality to our website to allow for more robust online customer engagement; and

WHEREAS on August 1, 2023, EBCE issued a Request for Proposal for East Bay Community Energy Authority Website Redesign. Twelve firms responded with proposals, which were reviewed and scored by a team of EBCE marketing and IT staff. The top five scoring firms were interviewed, and follow-up interviews were performed with the top two firms. Project6 was ultimately selected for their excellent portfolio of work with similar clients, exceptional design and technical skills, and reasonable pricing. They are an award-winning, Small Business Certified, Green Business Certified local business based in Berkeley; and,

WHEREAS EBCE staff hope to complete this project this fiscal year.

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 a Consulting Services Agreement with Project6 Design, Inc., a Berkeley-based, small business S-Corporation, to provide website design and development services including strategy, design, development, testing, and integration, consistent with the terms described in the staff report accompanying this Resolution. The term of the Agreement will be through June 30, 2024, with compensation not-to-exceed an amount of \$250,000. The Agreement shall be subject to review and approval by General Counsel.

ADOPTED AND APPROVED this 18th day of October, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



Consent Item 9

TO: East Bay Community Energy Board of Directors
FROM: Chris Eshleman, Director of Energy Analytics and Electric Supply
SUBJECT: Amendment Renewing CSA with cQuant.IO, Inc.
DATE: October 18, 2023

Recommendation

Adopt a Resolution authorizing the Chief Executive Officer to negotiate and execute a Third Amendment to the EBCE Consulting Services Agreement with cQuant.IO, Inc. (“cQuant”) for portfolio, risk, and valuation management software services renewing a 3-year subscription term with annual payments of \$185,110 for year 1, \$198,067 for year 2, and \$211,932 for year 3, with a new total compensation amount for the Agreement not to exceed \$1,196,109.

Background and Discussion

East Bay Community Energy (EBCE) staff have utilized cQuant’s software platform for portfolio, risk, and valuation management effective September 24th, 2020. This solution primarily serves the needs of the Power Resources team while providing additional functionality to the Data and Analytics team, Local Development team, and Finance.

EBCE staff has utilized cQuant’s platform for ongoing portfolio management, risk management reporting, annual budgeting, and valuation analysis for EBCE’s 2020, 2022 and 2023 long-term resource Request for Offers (RFO).

1. Assessment, Review and Selection Process

EBCE staff initiated an assessment in Fall 2019, extending into Spring 2020. The first step was to determine what operations staff would conduct in-house and which would be consulted. It was determined that staff would conduct portfolio, risk management, and long-term contract valuation in-house. To accomplish the work a new software solution would be required that could evaluate potential Power Purchase Agreements (PPA), replace existing Microsoft Excel-based models, and reduce the need for consultants.

The following advantages for using cQuant were cited:

- Overall, the cQuant suite of products is more user friendly and allows for easier uploading, downloading, and manipulating of data from the models. The interface is

entirely web-based and allows users to access from anywhere they have internet access. After the hands-on workshop, staff unanimously agreed that this was valued and cQuant's interface was better.

- cQuant was observed to have better connectivity capabilities, allowing EBCE to access all raw data natively, ensuring that EBCE will be able to integrate with our existing databases, Application Programming Interfaces (API), spreadsheets, and business intelligence platforms.
- cQuant has a modular design that allows for the efficient running of individual models. Models can be strung together to create an analytical chain that increases efficiency in commonly run processes.
- cQuant has an error handling system that is easy to understand. When the user inputs data incorrectly, the system will alert the user to where the problem lies. This feature is very helpful because input errors will occur, and other systems fail with little guidance to resolve.

2. Proposed Subscription Services

EBCE staff proceeded to review and finalize the quote from cQuant. Below are the module components for the package proposed with descriptions:

- Spot Price Simulation - simulate hourly and sub-hourly spot prices over a user-defined time horizon by parameterizing a stochastic simulation against historical data along with a liquid traded forward price curve.
- Basis Simulation - simulate hourly and sub-hourly basis price spreads over a user-defined time horizon by parameterizing a stochastic simulation against spot price simulation outputs.
- Advanced Battery Storage Optimization - value and optimize storage technology dispatch to simulated power and ancillary services prices while maintaining operational constraints. Used in conjunction with simulated solar dispatch to value solar plus storage contracts.
- Weather and Load Forecasting - forecast hourly or sub-hourly load over a user-defined time horizon by parameterizing a stochastic simulation model against historical data.
- ReAssure Renewable Energy Valuation - compute the fair market value, forecast future energy production, and understand the risk for renewable energy contracts and production facilities.
- Net Position at Risk Composite - generate cash flow at risk (CFaR) and gross margin at risk (GMaR) report for a portfolio of generation assets and financial positions or the individual assets themselves. Compute analytical VaR (Value at Risk) for a portfolio of financial contracts.
- Retail Pricing - add forecasted retail revenue to net position metrics and asset valuation reporting.

EBCE staff will retain five (5) user licenses to cover members in Power Resources, Local Development and Data and Analytics teams.

Fiscal Impact

The original CSA 3-year subscription term had a not-to-exceed of \$561,000. EBCE amended the CSA for a 2-month dedicated server in March 2022 with a not-to-exceed of \$20,000. EBCE

amended the CSA a second time for a 2-month dedicated server in April 2023 with a not-to-exceed of \$20,000. The Amendment would extend the subscription term for an additional 3 years. Annual payments throughout the extended term would be \$185,110 year 1, \$198,067 year 2, and \$211,932 year 3 for a total cost of of \$595,109 for this Amendment. The total compensation of the Agreement is not-to-exceed for the total contract is \$1,196,109.

Attachments

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Authorizing the Chief Executive Officer to Negotiate and Execute an Amendment to the Consulting Services Agreement with cQuant.io, Inc. dated September 24th, 2020 to renewing the 3-year subscription term for the Provide Portfolio, Risk and Valuation Management Software Platform.

**RESOLUTION NO.
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE
OFFICER TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE CONSULTING
SERVICES AGREEMENT WITH CQUANT.IO, INC. DATED SEPTEMBER 24th 2020 TO RENEW THE
3-YEAR SUBSCRIPTION TERM FOR USE WITH THEIR PORTFOLIO, RISK AND VALUATION
MANAGEMENT SOFTWARE PLATFORM**

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. The city of Lathrop, located in San Joaquin County, was added as a member to EBCE and party to the JPA in October of 2023.

WHEREAS there is a need for EBCE to renew its subscription for and operate a Portfolio, Risk and Valuation Management software platform for the Power Resources, Local Development, and Data and Analytics objectives;

WHEREAS EBCE staff has negotiated and executed a Consulting Services Agreement with cQuant.IO, Inc. dated September 24th, 2020 with a term of 3-years (“Agreement”);

WHEREAS the services offered by cQuant.IO, Inc. was determined to be the best fit to meet the current and future needs of EBCE;

WHEREAS EBCE and cQuant.IO, Inc. executed a first amendment to the Agreement on March 25, 2022 for the purpose of expanding the scope or services and increasing the Agreement’s not-to-exceed amount by \$20,000, for a total amount not to exceed \$581,000;

WHEREASE EBCE and cQuant.IO, Inc. desire to execute a second amendment to the Agreement to again expand the scope of services and increasing the not-to-exceed amount by \$20,000, for a total amount not to exceed \$601,000.

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 a Third Amendment to the EBCE Consulting Services Agreement with cQuant.IO, Inc. dated September 24th, 2020, to renew a Portfolio, Risk and Valuation Management Software Platform for an additional 3-year subscription term with annual payments of \$185,110 for year 1, \$198,067 for year 2, and \$211,932 for year 3, for a total cost of \$595,109 for this Third Amendment. The new total compensation of the Agreement will not-to-exceed \$1,196,109.

ADOPTED AND APPROVED this 18th day of October 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



CEO Report Item 10

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: October 18, 2023

Recommendation

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

Executive Committee Meeting

An Executive Committee Meeting was held on Wednesday, October 4, 2023. Members received an update on the Health-e Communities program. The next meeting will be held on Wednesday, November 1, 2023 at 9 am.

Marketing Regulatory and Legislative Subcommittee Meeting

A Marketing Regulatory and Legislative Subcommittee Meeting was held on Friday, October 13, 2023. Members received updates about legislative priorities and the brand rollout. The next Marketing, Regulatory and Legislative Subcommittee meeting will be held on Friday, December 25, 2023 at 12 pm.

Brand Update

The initial launch of the Ava Community Energy brand is Tuesday, October 24, 2023. The following are changes to expect on launch day:

- **Website** “reskinned” with Ava branding and redirected to avaenergy.org
- **Social media** handles transferred to “PoweredWithAva”
- Employee and other public-facing **email addresses** migrated to @avaenergy.org (ebce addresses will still be delivered)
- **Call center** scripts and IVR refer to Ava Community Energy
- **Customer bills** generated with Ava Community Energy and new description
- **Ava templates in place:** powerpoint, board memos, letter head, etc.
- **Municipal partners** have toolkits in hand
- **Press release** explaining the name change



Staff Report Item 12

TO: East Bay Community Energy Board of Directors

FROM: Izzy Carson, Power Resources Manager

SUBJECT: Emissions Overview (Information Item)

DATE: October 18, 2023

Recommendation

Receive a presentation showing the history of the Bright Choice plan's emission factor and future emission reduction targets.

Background and Discussion

Staff is presenting an overview of the Bright Choice plan's emission factor to the Board. This presentation is in response to requests for additional information on Bright Choice emissions and the history and methodology of how this is calculated.

Bright Choice History

In October 2018, the Board adopted a 2018 calendar year emission factor of 142 pounds of carbon-dioxide equivalent per mega-watt hour (lb-CO₂^e/MWh) for the Bright Choice energy product, a product approved in 2018 that was established to provide a choice for customers for electricity at a lower price than PG&E as a comparable renewable product.

2020 Changes Impacting Procurement and Emissions Reporting

Carbon Free Allocation

In 2019 Pacific Gas and Electric (PG&E) initiated a formal large hydro and nuclear electricity allocation process determined by load share, with deliveries starting in 2020. The acceptance of this allocation did not have incremental cost to Community Choice Aggregators (CCAs) due to the Power Charge Indifference Adjustment (PCIA), a non-by passible charge set annually, under which all customers pay.

The fundamental question of whether to accept nuclear electricity from the allocation came down to a trade-off between having nuclear electricity as part of East Bay Community Energy's (EBCE) portfolio and lower greenhouse gas (GHG) emissions, or not having nuclear and accepting higher GHG emissions. Ultimately the Board elected to accept the large hydro allocation and reject the nuclear allocation.

With the introduction of the Carbon-Free Allocation, EBCE's large hydro portfolio was expected to be more in line with PG&E, and therefore renewable energy was a more appropriate focus.

Bright Choice Procurement Floor

In 2020 the Bright Choice renewable target was amended to establish a clean energy procurement floor that was intended to be higher than PG&E. The procurement floor was derived based on PG&E's prior year renewable energy power content forecast, plus an additional 5% renewables.

While the 5% buffer was included to mitigate uncertainty in PG&E's provided forecast, it was noted at the April 2020 Board meeting that there was a possibility that in a given year EBCE's renewable percentage may be less than PG&E's. This approach did have increasing forecasting challenges due to a lack of visibility into PG&E's annual renewable target. Furthermore, the reporting lag on power content means that actual values are not fully validated until their Power Content Label is produced, which occurs in the Fall of the year after the power is procured.

Assembly Bill (AB) 1110

In 2016, AB 1110 was passed which modified the Power Source Disclosure Report (PSDR) methodology and impacted the information shared with customers on the Power Content Label (PCL). The new methodology required electricity suppliers, EBCE included, to disclose the GHG emissions intensity associated with its electricity sources. The California Energy Commission (CEC) updated the PSDR regulations implementing AB 1110 effective May 2020.

AB 1110 required that emission factors could only be marketed using the newly adopted PSDR regulations methodology and that other methods for calculating emissions factors like The Climate Registry (TCR), a national emissions accounting methodology that was widely used by load serving entities, including CA utilities, CCAs and cities could not be used for calculating and disclosing emission factors to customers. The global emissions perspective of TCR was replaced with a California specific methodology, with the most significant change being in the application of the associated GHG emissions from firm and shaped Renewable Energy Credit (REC) purchases, also known as Portfolio Content Category (PCC) 2 RECs. PCC2 RECs are a California Renewable Portfolio Standard (RPS) renewable product that are by in large solar, wind and hydro resources, generated outside of California. Under the new CA specific methodology, these PCC2 RECs, regardless of source, are given an equivalent emissions factor equal to unspecified power, resulting in a material increase in reported emissions.

Path to Zero Emissions 2030

In December of 2020, the Board adopted a clean energy goal for all electricity within EBCE's portfolio to have zero net emissions by 2030. In April of 2022, a path to reach that zero

emissions goal was approved by the Board, which included annual targets for renewables and large hydro (as a percentage of sales) to reach that goal. Two months later in June of 2022, the renewable targets were increased by an additional 5%.

The path to zero emissions also removed the use of Pacific Gas and Electric’s (PG&E) prior year renewable content forecast as the basis for the annual procurement floor for Bright Choice. This step de-coupled the renewable content of Bright Choice from PG&E renewable content forecasts and established the annual steps that would lead to zero emission electricity in 2030.

Bright Choice Annual Renewable and Carbon Free Electricity Targets

The table below shows renewable and carbon free content targets through 2030 for Bright Choice, including estimates for unspecified power based on those targets, as well as estimates for emission factors in future years, and the CA RPS percentages for comparison. The totals for 2018 through 2022 represent actual sales and electricity purchases.

Table 1: Bright Choice: Renewable, Carbon Free Percentages by Year, Unspecified Power estimates and PCL Emissions Factor for Bright Choice

Year	Bright Choice				CA-RPS %
	Renewable %	Carbon Free %	Unspecified %	PSDR Emission Factor	Renewable %
2018	41%	62%	38%	n/a	29%
2019	60%	87%	13%	n/a	31%
2020	40%	55%	45%	591	33%
2021	42%	60%	40%	564	36%
2022	49%	72%	28%	496	39%
2023	49%	66%	34%	521	41%
2024	52%	71%	29%	455	44%
2025	56%	76%	24%	387	47%
2026	60%	81%	19%	315	49%
2027	64%	85%	15%	241	52%
2028	67%	90%	10%	163	55%
2029	71%	95%	5%	83	57%
2030	75%	100%	0%	-	60%

There are two primary factors influencing Bright Choice emissions. The largest source of emissions in EBCE’s portfolio is power content from emitting generation sources and for Bright Choice this is unspecified power which is the balance of carbon free electricity purchases (which includes renewable) and total sales. Unspecified electricity is not purchased for Bright Choice for content purposes but is reflective of the total sales net of carbon free content. The second factor influencing the Bright Choice emissions is renewable content from PCC2 RECs since the PSDR emissions reporting regulations require EBCE to report emissions for these renewable purchases when the source of the energy is not specified. Annual increases in the renewable and carbon free content result in annual reductions in the emission factor and unspecified power for Bright Choice.

Not shown in the above table but reflected in the estimates for emission factors is an annual reduction in the purchase of PCC2 RECs for the Bright Choice plan whereby 2030 all of the renewable electricity for Bright Choice would come from PCC1 RECs.

Fiscal Impact

There are no fiscal impacts as this item provides information only on Bright Choice product emissions.

Attachments

- A. Presentation

OCTOBER 18, 2023

Bright Choice Emissions Overview



Overview

- What is Power Content
- EBCE Product Overview
- Renewable Energy Credits and Portfolio Content Category Classifications
- EBCE Bright Choice Target History
- PG&E Carbon Free Allocation
- Bright Choice Amendment to Power Content
- Emissions Accounting Methodology
- Where we are now
- CCA Comparison

What is the Power Content Label (PCL)?

PCL

- Published annually, based on prior calendar year generation from owned or contracted-for resources
- Detailed breakdown on sources of energy used to provide electricity
- Resembles a nutrition label for electricity
- The PCL submission is reviewed and approved by the CEC

2022 POWER CONTENT LABEL								
East Bay Community Energy								
https://ebce.org/key-documents/								
Greenhouse Gas Emissions Intensity (lbs CO ₂ e/MWh)				Energy Resources	Renewable 100	Brilliant 100	Bright Choice	2022 CA Power Mix
Renewable 100	Brilliant 100	Bright Choice	2022 CA Utility Average	Eligible Renewable ¹	100.0%	35.8%	49.4%	35.8%
0	0	496	422	Biomass & Biowaste	0.0%	0.0%	1.5%	2.1%
				Geothermal	0.0%	0.0%	0.8%	4.7%
				Eligible Hydroelectric	0.0%	0.0%	1.4%	1.1%
				Solar	50.0%	17.9%	18.1%	17.0%
				Wind	50.0%	17.9%	27.6%	10.8%
				Coal	0.0%	0.0%	0.0%	2.1%
				Large Hydroelectric	0.0%	64.2%	21.9%	9.2%
				Natural Gas	0.0%	0.0%	0.0%	36.4%
				Nuclear	0.0%	0.0%	0.2%	9.2%
				Other	0.0%	0.0%	0.0%	0.1%
				Unspecified Power ²	0.0%	0.0%	28.4%	7.1%
				TOTAL	100.0%	100.0%	100.0%	100.0%
Percentage of Retail Sales Covered by Retired Unbundled RECs ³ :					0%	0%	1%	
<p>¹The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.</p> <p>²Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.</p> <p>³Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.</p>								
For specific information about this electricity portfolio, contact:					East Bay Community Energy 1-833-699-EBCE (3223)			
For general information about the Power Content Label, visit:					https://www.energy.ca.gov/programs-and-topics/programs/power-source-disclosure-program			

EBCE's Customer Products

Renewable 100

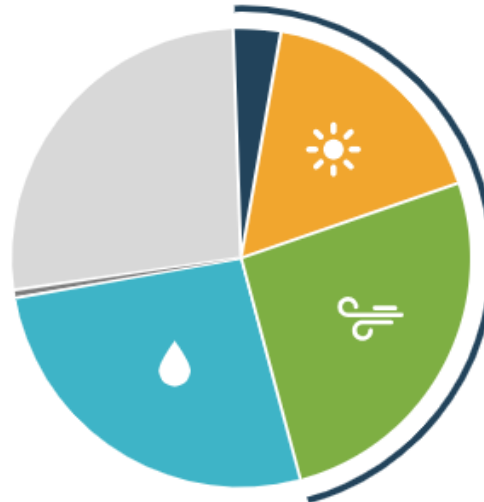
100% renewable energy from California solar & wind power at a slightly higher price than PG&E



100% eligible renewable

Bright Choice

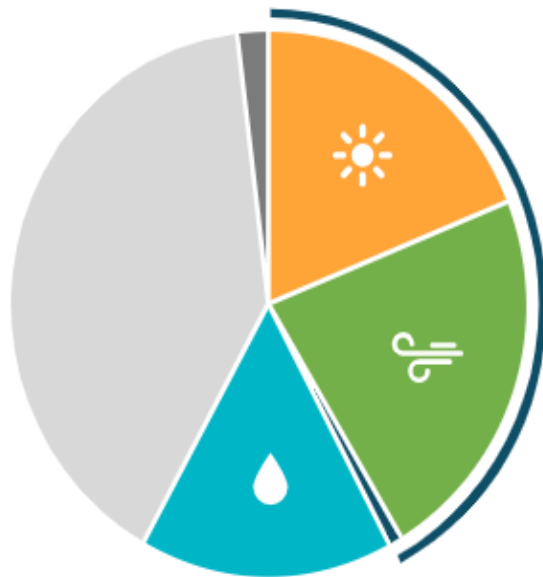
Our basic plan, which costs less than PG&E



49.4% eligible renewable energy

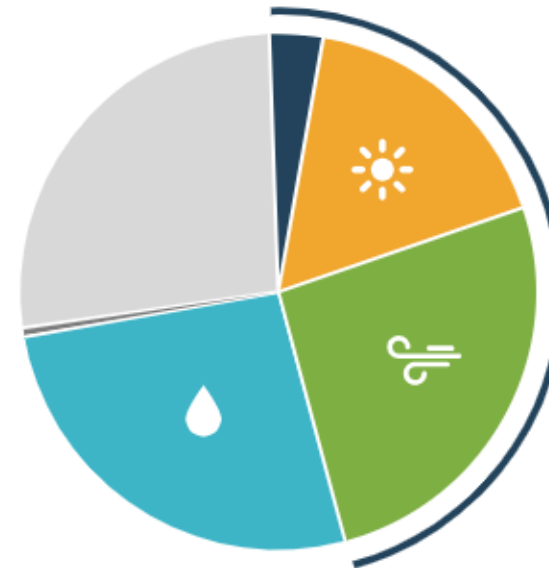
EBCE Bright Choice Comparison

2021



42.3% eligible renewable

2022



49.4% eligible renewable energy

KEY

- Wind
- Solar
- Hydro
- Biomass & Biowaste, Geothermal, Eligible Hydroelectric
- Other or Unspecified
- Nuclear

Renewable Energy Credits and Portfolio Content Category Classifications

Renewable Energy Credits (RECs):

- Represent clean energy attributes of renewable electricity
- Each REC is equivalent to one MWh of renewable electricity generated
- Limitations to the amount that each group can count towards RPS requirements
- Classified into three distinct categories Portfolio Content Categories (PCC)

PCC 1	Energy and REC are from same source and delivered into a California Balancing Authority (CBA) without any substitution
PCC 2	Substitute Energy not from the same source as REC
PCC 3	Electricity Products Not Qualified as PCC 1 or PCC 2, Including Unbundled RECs

Bright Choice History

Bright Choice plan was created to provide electricity to customers at a lower price than PG&E as a comparable product.

2018 – Bright Choice was a Board approved product, with an approved power content set at 85% carbon free

- October 2018 – Board approved use of The Climate Registry (TCR) carbon accounting methodology and 2018 calendar year emissions factor target of 142 lb-CO₂e/MWh (Actual 2018 emissions was 101 lb-CCO₂e/MWh)
- TCR is a national emissions accounting methodology that was widely used by load serving entities, including CA IOUs and CCAs, and cities

2019 PG&E Carbon Free Allocation

- PG&E initiated a formal large hydro and nuclear allocation process determined by load share, with deliveries starting in 2020. The acceptance of this allocation had zero incremental cost to CCAs due to PCIA
- EBCE initiated discussions in the November 2019 ExComm meeting followed by extensive discussions on risks, benefits, and costs with the Board and CAC at the December 2019 and January 2020 Board meetings
 - Fundamental question for accepting nuclear or not came down to a trade-off between having nuclear and lower greenhouse gas emissions, or not having nuclear and **accepting higher greenhouse gas emissions**
 - EBCE board elected to accept the large hydro allocation



2020 Amendment to Bright Choice Power Content Guidelines

- With the introduction of the carbon free allocation, EBCE's large hydro portfolio content was expected to be generally in line with PG&E, and therefore Renewable Energy was a much more appropriate focus
- Renewables target was amended to reflect a clean energy procurement floor based on PG&E's prior year renewable energy power content forecast + 5% buffer for uncertainty

$$2020 \text{ Bright Choice Renewable \%} = [2019 \text{ PG\&E Renewable Forecast}] + 5\% = 39.5\%$$

- Challenges existed under this approach due to lack of visibility into PG&E's annual renewable target and a changing RPS banking strategy. Furthermore, the reporting lag means that actual values are not fully validated until the fall of the year after the power is procured

Assembly Bill (AB) 1110

- Regulations modifying power content reporting methodology and emissions accounting methodology were initially implemented in 2020.
- AB 1110 fundamentally required replacing the previously accepted TCR emissions methodology, which took a global emissions perspective, with a California-centric emissions methodology
- Requires retail sellers to:
 - Include emissions from PCC 2 RECs resulting in a material increase in reported emissions
 - Resources, regardless of source (solar, wind, hydro) are given an equivalent emissions factor based on imported energy into CAISO, typically unspecified system power.

Where are we now?

- In December 2020, the Board adopted a clean energy goal for all electricity within EBCE's portfolio to have zero net emissions by 2030
- In April 2022, a path to reach that zero emissions goal in 2030 was approved, which included annual targets for renewable and large hydro (as a percentage of sales)
- 2022 and 2023 Targets were increased by an additional 5% in June 2022:

2022: Renewables 45% → 50%; Carbon Free 63% → 68%
2023: Renewables 49% → 54%; Carbon Free 66% → 71%

- 2023 and 2024 Targets were increased by an additional 5% and 10% respectively in June 2023
- **Increase applied to either renewable or carbon free target**

2023: Renewables 49% → 54%; Carbon Free 71% → 76%
2024: Carbon Free 71% → 81% (can be either RE or CO2 free)

Where are we now?

2022 (actuals): Renewable: 49.4%; Carbon Free:71.4%; Unspecified Power: 28.4%
 2023: Renewable target: 54%; Carbon Free target: 76%; unspecified target: 24%
 Current 2024: Carbon Free target: 81% (can include RE or CO2 free)

Year	Bright Choice					CA-RPS %
	Renewable %	Carbon Free %	Unspecified %	TCR*-Emission Factor	PSDR Emission Factor	Renewable %
2018	41%	62%	38%	101	<i>n/a</i>	29%
2019	60%	87%	13%	135	<i>n/a</i>	31%
2020	40%	55%	45%	<i>n/a</i>	591	33%
2021	42%	60%	40%	<i>n/a</i>	564	36%
2022	45%	63%	37%	<i>n/a</i>	566	39%
2023	49%	66%	34%	<i>n/a</i>	521	41%
2024	52%	71%	29%	<i>n/a</i>	455	44%
2025	56%	76%	24%	<i>n/a</i>	387	47%
2026	60%	81%	19%	<i>n/a</i>	315	49%
2027	64%	85%	15%	<i>n/a</i>	241	52%
2028	67%	90%	10%	<i>n/a</i>	163	55%
2029	71%	95%	5%	<i>n/a</i>	83	57%
2030	75%	100%	0%	<i>n/a</i>	-	60%

EBCE 2022 Bright Choice Emission Factor: 496
 TCR Emission Factor: 271.8
 PCC2 Emission Factor:224.2



Total Emissions Inclusive of Renewable 100 Product

Year	All Plans					CA-RPS %
	Renewable %	Carbon Free %	Unspecified %	TCR*-Emission Factor	PSDR-Emission Factor	Renewable %
2018	42%	88%	12%	82	<i>n/a</i>	29%
2019	65%	88%	12%	113	<i>n/a</i>	31%
2020	39%	61%	39%	<i>n/a</i>	488	33%
2021	42%	65%	35%	<i>n/a</i>	464	36%
2022	56%	69%	31%	<i>n/a</i>	450	39%
2023	59%	73%	27%	<i>n/a</i>	417	41%
2024	62%	77%	23%	<i>n/a</i>	364	44%
2025	65%	81%	19%	<i>n/a</i>	309	47%
2026	68%	85%	15%	<i>n/a</i>	252	49%
2027	71%	88%	12%	<i>n/a</i>	193	52%
2028	74%	92%	8%	<i>n/a</i>	131	55%
2029	77%	96%	4%	<i>n/a</i>	67	57%
2030	80%	100%	0%	<i>n/a</i>	-	60%

2021 R100 MWh: 97,229
 2022 R100 MWh: 1,421,427

EBCE 2022 All Plans Weighted Emissions: 382.87
 TCR Emission Factor: 208.65
 PCC2 Emission Factor: 174.22



CCA Comparison

	RPS	Hydro	% Nuclear	Non-nuke Carbon Free	Unspecified	Current Gen Rate	Cost Differential w/ PG&E	2022 Lbs CO2e/MWh
CleanPowerSF	59.9%	37.2%	0.0%	97.1%	2.9%	\$0.1375	-3.3%	47
MCE	59.6%	39.5%	0.4%	99.1%	0.5%	\$0.1490	4.7%	44
Peninsula	51.8%	48.2%	0.0%	100.0%	0.0%	\$0.1439	1.3%	9
Sonoma	50.3%	40.0%	0.9%	90.3%	8.7%	\$0.1353	-5.0%	112
Redwood Coast	50.0%	45.0%	0.0%	95.0%	5.0%	\$0.1509	5.9%	49
EBCE	49.4%	21.9%	0.2%	71.4%	28.4%	\$0.1342	-5.8%	496
Silicon Valley	44.9%	30.8%	24.3%	75.7%	0.0%	\$0.1459	2.7%	72
Pioneer	44.1%	1.3%	27.6%	45.4%	27.0%	\$0.1287	-10.3%	343
San Jose	40.2%	9.2%	30.9%	49.4%	19.8%	\$0.1487	4.5%	210
King City	38.5%	0.0%	0.0%	38.5%	61.5%	\$0.1524	6.8%	580
PG&E	38.3%	7.6%	49.3%	45.9%	0.0%	\$0.1420	0.0%	56
3CE	35.8%	5.9%	0.0%	41.7%	58.3%	\$0.1060	-34.0%	637
Valley	17.5%	7.4%	0.0%	24.9%	75.1%	\$0.1521	6.7%	709

Contributing factors to higher/lower emissions

- Acceptance or rejection of nuclear allocation
- Rates compared to PG&E
- Renewable and Hydro content
- Unspecified Power

Questions?

Thank You

Izzy Carson

Power Resources Manager



Staff Report Item 13

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, CEO
Inder Khalsa, General Counsel
Annie Henderson, VP Marketing & Account Services
Theresa McDermit, Head of Brand

SUBJECT: Amendment Joint Powers Agreement to Change Name of Authority

DATE: October 18, 2023

Recommendation

Approve an amendment to the East Bay Community Energy Authority Joint Powers Agreement to change the authority's name to Ava Community Energy Authority.

Background and Discussion

The Board adopted Resolution R-2023-39 in June 2023 to approve the use of the name Ava Community Energy Authority in all marketing materials starting October 2023. The current initial launch of the public-facing name is scheduled for Tuesday, October 24, 2023.

Staff ultimately determined that an amendment to the Joint Powers Authority Agreement (JPA Agreement) would be preferable to using a "doing business as" or "DBA" designation to formally implement the name change. A JPA Agreement amendment will allow the agency to formalize the name change with respect to banking accounts, contracts, CAISO registrations, as well as how the agency is represented on bills sent by PG&E

Other Community Choice Aggregators have followed a similar path and amended their JPAs to align with new public-facing names, including Central Coast Community Energy (3CE), MCE, and Pioneer Community Energy.

Section 8.4 of the JPA Agreement allows the Board of Directors to amend the JPA Agreement by a two-thirds affirmative vote. Notice was already provided to each of the agency's member agencies 30 days prior to the meeting, and staff has not received any objections by member agencies to the name change. The JPA Agreement further requires that prompt notice of the change be made to the member agencies should the Board approve the Amendment.

The proposed Resolution approves an amendment to the East Bay Community Energy Authority Joint Powers Agreement to change the name of the East Bay Community Energy Authority to Ava Community Energy Authority for all intents and purposes, and to allow staff to incorporate these changes into a revised JPA Agreement and perform the necessary filings with state and local agencies. Consistent with name change actions taken by other joint powers authorities in the state, the change will have no effect on the agency beyond its title. All other provisions of the JPA Agreement, including those related to formation of the agency, protections provided to the member agencies, and voting powers, etc., shall remain in full force in effect. In short, this amendment is administrative in nature and does not impact the legal powers or limitations on the agency.

The name change will take effect with the formal adoption of the attached Resolution by two-thirds vote of the Board of Directors.

Fiscal Impact

There will be legal fees associated with the necessary filings with the Secretary of State. All other costs associated with the new brand name were included in the budget approved for Fiscal Year 2023/2024.

Committee Recommendation

The proposal for a JPA amendment was not brought before any committee prior to coming to the Board.

Attachments

- A. Resolution
- B. JPA Amendment

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING A NAME CHANGE FROM EAST BAY COMMUNITY ENERGY AUTHORITY TO AVA COMMUNITY ENERGY AUTHORITY

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

WHEREAS, on September 24, 2002, the Governor of California signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the “Act”), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (“CCA”); and,

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency; and on December 1, 2016, the East Bay Community Energy Authority (“EBCE” or “the Agency”) was formed 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 and energy-related climate change programs in all of the member jurisdictions; and

WHEREAS, on November 8, 2017, the California Public Utilities Commission (“CPUC”) certified the “Implementation Plan” of EBCE, confirming EBCE’s compliance with the requirements of the Act; and

WHEREAS, the Joint Powers Agreement (“Agreement”) for the East Bay Community Energy Authority became effective on December 1, 2016; and

WHEREAS, the Board of Directors amended the Agreement to make certain changes regarding continued service on the Board of Directors upon completion of service to the member agency, the provision of additional alternates to serve on the Community Advisory Committee in the event of a regular member’s absence, appointment of the Chair and Vice Chair to serve terms consistent with the EBCE fiscal year, and amendment of the Local Development Business Plan preparation timeline pursuant to Resolution No. 2018-23; and,

WHEREAS, Resolution No. 2019-33, dated November 20, 2019, authorized the Cities of Tracy, Pleasanton, and Newark to become a party to the Agreement and a member of EBCE and revised the process for adding new parties to the Agreement; and,

WHEREAS, Resolution No. 2022-28, dated September 21, 2022, authorized the City of Stockton to become a party to the Agreement and a member of EBCE and revised the process for adding new parties to the Agreement; and,

WHEREAS, Resolution No. 2023-48 dated September 20, 2023, authorized the City of Lathrop to become a party to the Agreement and a member of EBCE;

WHEREAS the agency will soon serve a larger portion of San Joaquin County and residents of that region do not broadly identify as being from the “East Bay”,

WHEREAS the agency is expanding its engagement with customers and would like to position itself as an influencer of individual consumer decisions that advance decarbonization efforts,

WHEREAS a short, easy to say, memorable, and warm name will increase inclusivity and customer engagement; and,

WHEREAS the Board of Directors desires to name and brand the Agency as Ava Community Energy, in order to reflect the agency’s expanded jurisdiction while continuing to project an ongoing commitment to the delivery of clean power at low prices.

WHEREAS, the member agencies of the Agency were provided written notification of the proposed amendment 30 days prior to October 18, 2023, per Article 8.4 of the Joint Powers Agreement.

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

Section 1. The Agency shall be known as Ava Community Energy Authority, and for all official purposes the name of the Agency shall be Ava Community Energy Authority which is hereby approved and confirmed.

Section 2. All actions taken by the officers and agents of the Agency with respect to the matters contemplated by this Resolution are hereby approved, confirmed and ratified, and the property officers of the Agency are hereby authorized, for and in the name and on behalf of the Agency, to do any and all things and take any and all actions and execute and deliver any and all certificates, assignments and other documents that they, or any of them may deem necessary or advisable in order to consummate the matters contemplated by this Resolution. The officers of the Agency are further authorized and directed to provide official notice of the name change as may be required, including, but not limited to official filings with regulatory and other agencies, and to conduct all future affairs of the Agency under the name Ava Community Energy as of the Effective Date of this Resolution.

Section 3. All references to the “East Bay Community Energy Authority” in the Joint Powers Agreement are hereby deleted and replaced by references to “Ava Community Energy Authority.” This change shall have no impact on the powers or limitations of the Agency and all other provisions of the Joint Powers Agreement shall remain in full force and effect.

Section 4. This Resolution shall take effect immediately upon adoption by two-thirds of the Board of Directors.

ADOPTED AND APPROVED this 18th day of October, 2023

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

Ava Community Energy Authority

- Joint Powers Agreement –

Effective December 1, 2016

As amended by Resolution No. 2018-23 dated June 20, 2018

As further amended by Resolution No. R-2022-28 dated September 21, 2022

As further amended by Resolution No. 2023-48 dated September 20, 2023

Among The Following Parties:

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Lathrop

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City

AVA COMMUNITY ENERGY AUTHORITY

JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”), effective as of December 1, 2016, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit A (“Parties”). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse gas emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 1.1.16 below) entering into this Agreement include securing electrical energy supply for customers in participating jurisdictions, addressing climate change by reducing energy related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as jobs creation, community energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to State, regional and local solar and wind energy production.
4. The Parties desired to establish a separate public agency, known as the East Bay Community Energy Authority (“Authority”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.
6. By establishing the Authority, the Parties seek to:
 - (a) Provide electricity rates that are lower or competitive with those offered by PG&E for similar products;

- (b) Offer differentiated energy options (e.g. 33% or 50% qualified renewable) for default service, and a 100% renewable content option in which customers may “opt-up” and voluntarily participate;
 - (c) Develop an electric supply portfolio with a lower greenhouse gas (GHG) intensity than PG&E, and one that supports the achievement of the parties’ greenhouse gas reduction goals and the comparable goals of all participating jurisdictions;
 - (d) Establish an energy portfolio that prioritizes the use and development of local renewable resources and minimizes the use of unbundled renewable energy credits;
 - (e) Promote an energy portfolio that incorporates energy efficiency and demand response programs and has aggressive reduced consumption goals;
 - (f) Demonstrate quantifiable economic benefits to the region (e.g. union and prevailing wage jobs, local workforce development, new energy programs, and increased local energy investments);
 - (g) Recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California. The Authority, as a leader in the shift to a clean energy, commits to ensuring it will take steps to minimize any adverse impacts to these workers to ensure a “just transition” to the new clean energy economy;
 - (h) Deliver clean energy programs and projects using a stable, skilled workforce through such mechanisms as project labor agreements, or other workforce programs that are cost effective, designed to avoid work stoppages, and ensure quality;
 - (i) Promote personal and community ownership of renewable resources, spurring equitable economic development and increased resilience, especially in low income communities;
 - (j) Provide and manage lower cost energy supplies in a manner that provides cost savings to low-income households and promotes public health in areas impacted by energy production; and
 - (k) Create an administering agency that is financially sustainable, responsive to regional priorities, well managed, and a leader in fair and equitable treatment of employees through adopting appropriate best practices employment policies, including, but not limited to, promoting efficient consideration of petitions to unionize, and providing appropriate wages and benefits.
- (l) The Parties desire to change the name of the agency from East Bay Community Energy Authority to Ava Community Energy Authority.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified below, unless the context requires otherwise.

- 1.1.1 “AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.
- 1.1.2 “Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)
- 1.1.3 “Agreement” means this Joint Powers Agreement.
- 1.1.4 “Annual Energy Use” has the meaning given in Section 1.1.23.
- 1.1.5 “Authority” means the Ava Community Energy Authority established pursuant to this Joint Powers Agreement.
- 1.1.6 “Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.
- 1.1.7 “Board” means the Board of Directors of the Authority.
- 1.1.8 “Community Choice Aggregation” or “CCA” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.
- 1.1.9 “CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.
- 1.1.10 “Days” shall mean calendar days unless otherwise specified by this Agreement.
- 1.1.11 “Director” means a member of the Board of Directors representing a Party, including an alternate Director.
- 1.1.12 “Effective Date” means the date on which this Agreement shall become effective and the Ava Community Energy Authority shall exist as a separate public agency, as further described in Section 2.1.
- 1.1.13 “Ex Officio Board Member” means a non-voting member of the Board of Directors as described in Section 4.2.2. The Ex Officio Board Member may not serve on the Executive Committee of the Board or participate in closed session meetings of the Board.

- 1.1.14** “Implementation Plan” means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.
- 1.1.15** “Initial Costs” means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. The Board shall determine the termination date for Initial Costs.
- 1.1.16** “Initial Participants” means, for the purpose of this Agreement the County of Alameda, the Cities of Albany, Berkeley, Emeryville, Oakland, Piedmont, San Leandro, Hayward, Union City, Fremont, Dublin, and Livermore.
- 1.1.17** “Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.
- 1.1.18** “Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.19** “Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.20** “Percentage Vote” means a vote taken by the Board pursuant to Section 4.12.1 that is based on each Party having one equal vote.
- 1.1.21** “Total Annual Energy” has the meaning given in Section 1.1.23.
- 1.1.22** “Voting Shares Vote” means a vote taken by the Board pursuant to Section 4.12.2 that is based on the voting shares of each Party described in Section 1.1.23 and set forth in Exhibit C to this Agreement. A Voting Shares vote cannot take place on a matter unless the matter first receives an affirmative or tie Percentage Vote in the manner required by Section 4.12.1 and three or more Directors immediately thereafter request such vote.
- 1.1.23** “Voting Shares Formula” means the weight applied to a Voting Shares Vote and is determined by the following formula:
- (Annual Energy Use/Total Annual Energy) multiplied by 100, where (a) “Annual Energy Use” means (i) with respect to the first two years following the Effective Date, the annual electricity usage, expressed in

kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party’s respective jurisdiction that are served by the Authority and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit B and the initial voting shares are designated in Exhibit C. Both Exhibits B and C shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year subject to the approval of the Board.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

- Exhibit A: List of the Parties
- Exhibit B: Annual Energy Use
- Exhibit C: Voting Shares

1.3 Revision of Exhibits. The Parties agree that Exhibits A, B and C to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2
FORMATION OF AVA COMMUNITY ENERGY AUTHORITY (FORMERLY EAST BAY COMMUNITY ENERGY AUTHORITY)

2.1 Effective Date and Term. This Agreement shall become effective and Ava Community Energy Authority shall exist as a separate public agency on December 1, 2016, provided that this Agreement is executed on or prior to such date by at least three Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.3, subject to the rights of the Parties to withdraw from the Authority.

2.2 Initial Participants. Until December 31, 2016, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(12) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party that is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

2.3 Formation. There is formed as of the Effective Date a public agency named the East Bay Community Energy Authority, later renamed Ava Community Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing boards of all Parties.

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

2.5 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:

- 2.5.1** to make and enter into contracts, including those relating to the purchase or sale of electrical energy or attributes thereof;
- 2.5.2** to employ agents and employees, including but not limited to a Chief Executive Officer and General Counsel;
- 2.5.3** to acquire, contract, manage, maintain, and operate any buildings, works or improvements, including electric generating facilities;
- 2.5.4** to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
- 2.5.5** to lease any property;
- 2.5.6** to sue and be sued in its own name;
- 2.5.7** to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 *et seq.* and authority under the Act;
- 2.5.8** to form subsidiary or independent corporations or entities, if appropriate, to carry out energy supply and energy conservation programs at the lowest possible cost consistent with the Authority's CCA Program

implementation plan, risk management policies, or to take advantage of legislative or regulatory changes;

- 2.5.9 to issue revenue bonds and other forms of indebtedness;
- 2.5.10 to apply for, accept, and receive all licenses, permits, grants, loans or other assistance from any federal, state or local public agency;
- 2.5.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- 2.5.12 to adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”);
- 2.5.13 to make and enter into service, energy and any other agreements necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services; and
- 2.5.14 to negotiate project labor agreements, community benefits agreements and collective bargaining agreements with the local building trades council and other interested parties.

2.6 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the City of Emeryville and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.

2.7 Compliance with Local Zoning and Building Laws. Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act (“CEQA”).

2.8 Compliance with the Brown Act. The Authority and its officers and employees shall comply with the provisions of the Ralph M. Brown Act, Government Code Section 54950 *et seq.*

2.9 Compliance with the Political Reform Act and Government Code Section 1090. The Authority and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 *et seq.*) and Government Code Section 1090 *et seq.*, and shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board of Directors may adopt additional conflict of interest regulations in the Operating Rules and Regulations.

ARTICLE 3
AUTHORITY PARTICIPATION

3.1 Addition of Parties. Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption by an affirmative vote of a majority of all Directors of the entire Board satisfying the requirements described in Section 4.12, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership fee, if any, and (e) satisfaction of any conditions established by the Board.

3.2 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4
GOVERNANCE AND INTERNAL ORGANIZATION

4.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

4.2 Appointment of Directors. The Directors shall be appointed as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the regular Director shall be a member of the governing body of the Party at the time of appointment but may continue to serve as a Director following his/her term as a member of the Party's governing body until a new Director is appointed pursuant to the timing in Section 4.3. The person appointed and designated as the alternate Director shall also be a member of the governing body of a Party and the alternate may continue to serve as an alternate following his/her term as a member of a Party's governing body until a new alternate is appointed pursuant to the timing in Section 4.3.

- 4.2.2 The Board shall also include one non-voting ex officio member as defined in Section 1.1.13 (“Ex Officio Board Member”). The Chair of the Community Advisory Committee, as described in Section 4.9 below, shall serve as the Ex Officio Board Member. The Vice Chair of the Community Advisory Committee shall serve as an alternate Ex Officio Board Member when the regular Ex Officio Board Member is absent from a Board meeting.
- 4.2.3 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.12 may include rules regarding Directors, such as meeting attendance requirements. No Party shall be deprived of its right to seat a Director on the Board.

4.3 Term of Office. Each regular and alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents and may be removed as Director by such governing body at the time. If at any time a vacancy occurs on the Board because a Director is no longer a member of a Party’s governing body, the Party shall appoint a replacement to fill the position of the previous Director in accordance with the provisions of Section 4.2.1 within ninety (90) days of the date that such Director is no longer a member of a Party’s governing body or for any other reason that such position becomes vacant.

4.4 Quorum. A majority of the Directors of the entire Board shall constitute a quorum, except that less than a quorum may adjourn a meeting from time to time in accordance with law.

4.5 Powers and Function of the Board. The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law. Board approval shall be required for any of the following actions, which are defined as “Essential Functions”:

- 4.5.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
- 4.5.2 The hiring of a Chief Executive Officer and General Counsel.
- 4.5.3 The appointment or removal of an officer.
- 4.5.4 The adoption of the Annual Budget.
- 4.5.5 The adoption of an ordinance.
- 4.5.6 The initiation of resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel, on behalf of the Authority, may intervene in, become party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative

agency, without approval of the Board. The Board shall adopt Operating Rules and Regulations governing the Chief Executive Officer and General Counsel's exercise of authority under this Section 4.5.6.

4.5.7 The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

4.5.8 Termination of the CCA Program.

4.6 **Executive Committee.** The Board shall establish an Executive Committee consisting of a smaller number of Directors. The Board may delegate to the Executive Committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain Essential Functions, as described in Section 4.5 and the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.12 to adopt and amend the Operating Rules and Regulations or its Essential Functions listed in Section 4.5. After the Executive Committee meets or otherwise takes action, it shall, as soon as practicable, make a report of its activities at a meeting of the Board.

4.7 **Director Compensation.** Directors shall receive a stipend of \$100 per meeting, as adjusted to account for inflation, as provided for in the Authority's Operating Rules and Regulations.

4.8 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

4.9 **Community Advisory Committee.** The Board shall establish a Community Advisory Committee consisting of nine members and three alternates, none of whom may be voting members of the Board. One alternate from the pool of three alternates may take the place of a Community Advisory Member when a Community Advisory Committee member cannot attend a meeting. The Community Advisory Committee member that is unable to attend a meeting must notify the alternates of their inability to attend and obtain confirmation that one of the Alternates can attend the Community Advisory Committee meeting in that member's place. The function of the Community Advisory Committee shall be to advise the Board of Directors on all subjects related to the operation of the CCA Program as set forth in a work plan adopted by the Board of Directors from time to time, with the exception of personnel and litigation decisions. The Community Advisory Committee is advisory only, and shall not have decision making authority, or receive any delegation of authority from the Board of Directors. The Board shall publicize the opportunity to serve on the Community Advisory Committee and shall appoint members of the Community Advisory Committee and Alternates from those individuals expressing interest in serving, and who represent a diverse cross-section of interests, skill sets and geographic regions. Members of the Community Advisory Committee shall serve staggered four-years terms (the first term of three of the members shall be two years, and four years

thereafter), which may be renewed. A member or Alternate of the Community Advisory Committee may be removed by the Board of Directors by majority vote. The Board of Directors shall determine whether the Community Advisory Committee members will receive a stipend or be entitled to reimbursement of expenses.

4.10 Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, including the power to hire, discipline and terminate employees as well as the power to approve any agreement, if the expenditure is authorized in the Authority's approved budget, except the powers specifically set forth in Section 4.5 or those powers which by law must be exercised by the Board of Directors. The Board of Directors shall provide procedures and guidelines for the Chief Executive Officer exercising the powers of the Authority in the Operating Rules and Regulations.

4.11 General Counsel. The Board of Directors shall appoint a General Counsel for the Authority, who shall be responsible for providing legal advice to the Board of Directors and overseeing all legal work for the Authority.

4.12 Board Voting.

4.12.1 Percentage Vote. Except when a supermajority vote is expressly required by this Agreement or the Operating Rules and Regulations, action of the Board on all matters shall require an affirmative vote of a majority of all Directors on the entire Board (a "Percentage Vote" as defined in Section 1.1.20). A supermajority vote is required by this Agreement for the matters addressed by Section 8.4. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, action of the Board shall require an affirmative Percentage Vote of the specified supermajority of all Directors on the entire Board. No action can be taken by the Board without an affirmative Percentage Vote. Notwithstanding the foregoing, in the event of a tie in the Percentage Vote, an action may be approved by an affirmative "Voting Shares Vote," as defined in Section 1.1.22, if three or more Directors immediately request such vote.

4.12.2 Voting Shares Vote. In addition to and immediately after an affirmative percentage vote, three or more Directors may request that, a vote of the voting shares shall be held (a "Voting Shares Vote" as defined in Section 1.1.22). To approve an action by a Voting Shares Vote, the corresponding voting shares (as defined in Section 1.1.23 and Exhibit C) of all Directors voting in the affirmative shall exceed 50% of the voting share of all Directors on the entire Board, or such other higher voting shares percentage expressly required by this Agreement or the Operating Rules and Regulations. In the event that any one Director has a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter. When a voting shares

vote is held, action by the Board requires both an affirmative Percentage Vote and an affirmative Voting Shares Vote. Notwithstanding the foregoing, in the event of a tie in the Percentage Vote, an action may be approved on an affirmative Voting Shares Vote. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, the supermajority vote is subject to the Voting Share Vote provisions of this Section 4.12.2, and the specified supermajority of all Voting Shares is required for approval of the action, if the provision of this Section 4.12.2 are triggered.

4.13 Meetings and Special Meetings of the Board. The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

4.14 Officers.

4.14.1 Chair and Vice Chair. Prior to the end of the fiscal year, the Directors shall elect, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The newly elected Chair and Vice Chair shall commence serving in those capacities on July 1, except that no separate election shall be required for Fiscal Year 2018-2019 and the Chair and Vice Chair elected in 2018 shall continue to serve until the end of the 2018-2019 Fiscal Year. The Chair and Vice Chair shall hold office for one year and serve no more than two consecutive terms, however, the total number of terms a Director may serve as Chair or Vice Chair is not limited. The office of either the Chair or Vice Chair shall be declared vacant and the Board shall make a new selection if: (a) the person serving dies, resigns, or ceases to be a member of the governing body of a Party that person represents, except if the person is continuing to serve on the Board after that person no longer serves on the governing body in conformance with section 4.2.1; (b) the Party that the person represents removes the person as its representative on the Board, or (c) the Party that the person represents withdraws from the Authority pursuant to the provisions of this Agreement.

4.14.2 Secretary. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

4.14.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. The same person may not

simultaneously hold both the office of Treasurer and the office of the Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made annually by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to file with the Authority an official bond in an amount to be fixed by the Board, and if so requested, the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time.

4.15 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

4.16 Operational Audit. The Authority shall commission an independent agent to conduct and deliver at a public meeting of the Board an evaluation of the performance of the CCA Program relative to goals for renewable energy and carbon reductions. The Authority shall approve a budget for such evaluation and shall hire a firm or individual that has no other direct or indirect business relationship with the Authority. The evaluation shall be conducted at least once every two years.

ARTICLE 5

IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Implementation of the CCA Program.

5.1.1 Enabling Ordinance. Prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

5.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.12.

5.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

5.2 Other Authority Documents. The Parties acknowledge and agree that the operations of the Authority will be implemented through various documents duly adopted by the Board through Board resolution or minute action, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 7.

5.3 Integrated Resource Plan. The Authority shall cause to be prepared an Integrated Resource Plan in accordance with CPUC regulations that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with the State Renewable Portfolio standard and customer rate competitiveness. The Authority shall prioritize the development of energy projects in Alameda and adjacent counties. Principal aspects of its planned operations shall be in a Business Plan as outlined in Section 5.4 of this Agreement.

5.4 Business Plan. The Authority shall cause to be prepared a Business Plan, which will include a roadmap for the development, procurement, and integration of local renewable energy resources as outlined in Section 5.3 of this Agreement. The Business Plan shall include a description of how the CCA Program will contribute to fostering local economic benefits, such as job creation and community energy programs. The Business Plan shall identify opportunities for local power development and how the CCA Program can achieve the goals outlined in Recitals 3 and 6 of this Agreement. The Business Plan shall include specific language detailing employment and labor standards that relate to the execution of the CCA Program as referenced in this Agreement. The Business Plan shall identify clear and transparent marketing practices to be followed by the CCA Program, including the identification of the sources of its electricity and explanation of the various types of electricity procured by the Authority. The Business Plan shall cover the first five (5) years of the operation of the CCA Program. Progress on the implementation of the Business Plan shall be subject to annual public review.

5.5 Labor Organization Neutrality. The Authority shall remain neutral in the event its employees, and the employees of its subcontractors, if any, wish to unionize.

5.6 Renewable Portfolio Standards. The Authority shall provide its customers renewable energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. The Authority shall not procure energy from Category 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) exceeding 50% of the State law requirements, to achieve its renewable portfolio goals. However, for Category 3 RECs associated with generation facilities located within its service jurisdiction, the limitation set forth in the preceding sentence shall not apply.

ARTICLE 6 **FINANCIAL PROVISIONS**

6.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

6.2 Depository.

6.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times.

6.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

6.3 Budget and Recovery Costs.

6.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 Funding of Initial Costs. The County shall fund the Initial Costs of establishing and implementing the CCA Program. In the event that the CCA Program becomes operational, these Initial Costs paid by the County and any specified interest shall be included in the customer charges for electric services to the extent permitted by law, and the County shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over

which such costs are recovered. In the event that the CCA Program does not become operational, the County shall not be entitled to any reimbursement of the Initial Costs.

- 6.3.4 Additional Contributions and Advances.** Pursuant to Government Code Section 6504, the Parties may in their sole discretion make financial contributions, loans or advances to the Authority for the purposes of the Authority set forth in this Agreement. The repayment of such contributions, loans or advances will be on the written terms agreed to by the Party making the contribution, loan or advance and the Authority.

ARTICLE 7

WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

- 7.1.1 General Right to Withdraw.** A Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.
- 7.1.2 Withdrawal Following Amendment.** Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement provided that the requirements of this Section 7.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board.
- 7.1.3 The Right to Withdraw Prior to Program Launch.** After receiving bids from power suppliers for the CCA Program, the Authority must provide to the Parties a report from the electrical utility consultant retained by the Authority comparing the Authority's total estimated electrical rates, the estimated greenhouse gas emissions rate and the amount of estimated renewable energy to be used with that of the incumbent utility. Within 30 days after receiving this report, through its City Manager or a person expressly authorized by the Party, any Party may immediately withdraw its membership in the Authority by providing written notice of withdrawal to the Authority if the report determines that any one of the following conditions exists: (1) the Authority is unable to provide total electrical rates, as part of its baseline offering to customers, that are equal to or lower than the incumbent utility, (2) the Authority is unable to provide

electricity in a manner that has a lower greenhouse gas emissions rate than the incumbent utility, or (3) the Authority will use less qualified renewable energy than the incumbent utility. Any Party who withdraws from the Authority pursuant to this Section 7.1.3 shall not be entitled to any refund of the Initial Costs it has paid to the Authority prior to the date of withdrawal unless the Authority is later terminated pursuant to Section 7.3. In such event, any Initial Costs not expended by the Authority shall be returned to all Parties, including any Party that has withdrawn pursuant to this section, in proportion to the contribution that each made. Notwithstanding anything to the contrary in this Agreement, any Party who withdraws pursuant to this section shall not be responsible for any liabilities or obligations of the Authority after the date of withdrawal, including without limitation any liability arising from power purchase agreements entered into by the Authority.

7.2 Continuing Liability After Withdrawal; Further Assurances; Refund. A Party that withdraws its membership in the Authority under either Section 7.1.1 or 7.1.2 shall be responsible for paying its fair share of costs incurred by the Authority resulting from the Party's withdrawal, including costs from the resale of power contracts by the Authority to serve the Party's load and any similar costs directly attributable to the Party's withdrawal, such costs being limited to those contracts executed while the withdrawing Party was a member, and administrative costs associated thereto. The Parties agree that such costs shall not constitute a debt of the withdrawing Party, accruing interest, or having a maturity date. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's costs described above. Any amount of the Party's funds held by the Authority for the benefit of the Party that are not required to pay the Party's costs described above shall be returned to the Party. The withdrawing party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. A withdrawing party has the right to continue to participate in Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party until the withdrawal's effective date.

7.3 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

7.4 Disposition of Property upon Termination of Authority. Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any Authority Documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Dispute Resolution. The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and the Authority. The Parties agree that each Party may specifically enforce this section 8.1. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 120 days after the demand for mediation is made, any Party and the Authority may pursue any remedies provided by law.

8.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 *et seq.* Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

8.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as the Board deems necessary to protect the interests of the Authority, the Parties and the public. Such insurance coverage shall name the Parties and their respective Board or Council members, officers, agents and employees as additional insureds. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

8.4 Amendment of this Agreement. This Agreement may be amended in writing by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.12. Except that, any amendment to the voting provisions in Section 4.12 may only be made by a three-quarters affirmative vote of the entire Board. The Authority shall provide written notice to the Parties at least 30 days in advance of any proposed amendment being considered by the Board. If the proposed amendment is adopted by the Board, the Authority shall provide prompt written notice to all Parties of the effective date of such amendment along with a copy of the amendment.

8.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of

proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

8.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

8.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

8.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 72 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties. All notices required hereunder shall be delivered to:

The County of Alameda

Director, Community Development Agency
224 West Winton Ave.
Hayward, CA 94612

With a copy to:

Office of the County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612

if to [PARTY No. ____]

Office of the City Clerk

Office of the City Manager/Administrator

Office of the City Attorney

if to [PARTY No. ____]

Office of the City Clerk

Office of the City Manager/Administrator

Office of the City Attorney

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Ava Community Energy Authority.

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

EXHIBIT A

LIST OF THE PARTIES

This Exhibit A is effective as of September 20, 2023.

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Lathrop

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City

EXHIBIT B**ANNUAL ENERGY USE**

This Exhibit B is effective as of September 20, 2023.

Party	kWh (2022*)
Albany	50,016,072
Berkeley	350,111,874
Dublin	250,811,690
Emeryville	173,586,542
Fremont	1,182,339,971
Hayward	681,289,470
Lathrop	183,070,584
Livermore	428,724,628
Newark	244,335,398
Oakland	1,713,563,058
Piedmont	28,595,451
Pleasanton	394,860,960
San Leandro	414,939,109
Stockton	1,153,820,553
Tracy	412,411,899
Unincorporated County	452,054,476
Union City	261,439,720
Total	8,375,971,455

All data provided by PG&E

EXHIBIT C**VOTING SHARES**

This Exhibit C is effective as of September 20, 2023.

Party	kWh (2022*)	Voting Shares Section 4.12.2
Albany	50,016,072	0.6%
Berkeley	350,111,874	4.2%
Dublin	250,811,690	3.0%
Emeryville	173,586,542	2.1%
Fremont	1,182,339,971	14.1%
Hayward	681,289,470	8.1%
Lathrop	183,070,584	2.2%
Livermore	428,724,628	5.1%
Newark	244,335,398	2.9%
Oakland	1,713,563,058	20.5%
Piedmont	28,595,451	0.3%
Pleasanton	394,860,960	4.7%
San Leandro	414,939,109	5.0%
Stockton	1,153,820,553	13.8%
Tracy	412,411,899	4.9%
Unincorporated County	452,054,476	5.4%
Union City	261,439,720	3.1%
Total	8,375,971,455	100%

*All data provided by PG&E



Staff Report Item 14

TO: East Bay Community Energy Board of Directors
FROM: Alec Ward, Principal Legislative Manager
SUBJECT: Update on EBCE's State Legislative Process (Informational)
DATE: October 18, 2023

Recommendation

Receive an informational update on state bills EBCE has been tracking and taking positions on this legislative session.

Background and Discussion

The intent of this staff report is to provide an update on the eight state bills EBCE has taken a position on this legislative session, as well as give an overview of other bills that are relevant to EBCE. The final day for California lawmakers to pass bills this year was September 14th, and the Governor will veto or sign bills until October 14th.

Fiscal Impact

For the state bills that passed with EBCE positions:

- AB 1373 may increase costs for EBCE customers as energy costs and resource adequacy penalties potentially increase.
- AB 50 may result in lower cost for EBCE projects as delays are avoided.
- SB 410 may result in lower cost for EBCE projects as delays are avoided.
- AB 557 is unlikely to have a fiscal impact on EBCE.

Attachments:

- A. Presentation

OCTOBER 18, 2023

Legislative Update



Key Deadlines for the 2023 Legislative Year

Attachment Staff Report Item 14A

- 1/4: Legislature reconvened
- 1/10: Governor submitted budget
- 2/17: Bill introduction deadline
- 4/28: Policy cmtes to move fiscal bills to fiscal cmtes (1st house)
- 5/5: Policy cmtes to move nonfiscal bills to floor (1st house)
- 5/19: Fiscal cmtes must move bills to floor (1st house)
- 6/2: Last day for bills to be passed out of 1st house
- 6/15: Budget bill must be passed
- 7/14: Policy cmtes to meet and report bills (2nd house)
- 9/1: Fiscal cmtes to move bills to floor (2nd house)
- 9/14: Last day for each house to pass bills
- 10/14: Last day for Governor to sign/veto bills

State Bill Tracker - EBCE Positions

Attachment Staff Report Item 14A

Bill #	Author	Description	Sponsor(s)	Status	EBCE Position
CENTRAL PROCUREMENT					
AB 1373	Garcia	Establishes a Central Procurement Entity for long-lead time resources, penalizes LSEs for missing RA targets, and expands CPUC control over CCA resource mix		Signed	NEUTRAL
ENERGIZATION					
AB 50	Wood	Requires CPUC to create an IOU shot-clock on interconnection for new and upgraded load , as well as increased reporting and transparency		Signed	SUPPORT
SB 410	Becker	Requires CPUC to create an IOU shot-clock on interconnection for new and upgraded load , consider remedial actions for misses, increase reporting, and ensure adequate staffing	International Brotherhood of Electrical Workers	Signed	SUPPORT
AB 643	Berman	Requires CPUC to create an IOU shot-clock on interconnection for distributed energy resources , consider penalties, reduce administrative burden, and increase reporting and transparency	California Solar and Storage Association (CalSSA)	2-year	SUPPORT
SB 83	Weiner	Requires CPUC to create an IOU shot-clock on new development , issue penalties for missed deadlines, and increase reporting	Housing Action Coalition	2-year	SUPPORT

State Bill Tracker - EBCE Positions

Attachment Staff Report Item 14A

Bill #	Author	Description	Sponsor(s)	Status	EBCE Position
BROWN ACT					
AB 557	Hart	Permits local agencies, like EBCE's board, to indefinitely continue the teleconference flexibilities given during a declared state of emergency	CA Special Districts Assoc., League of CA Cities, CA State Assoc. of Counties	Signed	SUPPORT
ELECTRIC VEHICLES					
SB 529	Gonzalez	Requires CEC to create a grant program to facilitate EV sharing services at affordable, multifamily housing properties	Los Angeles Cleantech Incubator	2-year	SUPPORT
BUILDING DECARBONIZATION					
SB 527	Min	Establishes a Neighborhood Zonal Decarbonization Program for 15 communities and authorizes gas corporations to cease service if the CPUC determines an area is better suited for electrification	Building Decarbonization Coalition	2-year	SUPPORT

State Bill Tracker - Watch

Attachment Staff Report Item 14A

Bill #	Author	Description	Status	EBCE Position
INTERCONNECTION				
SB 149	Caballero	Streamlines the preparation of the CEQA record and expedites the CEQA cases to 270 days	Signed	WATCH
CLIMATE BOND				
AB 1567	Garcia	\$2 billion bond for clean energy including transmission + distribution, EV charging, and fed matching	2-year	WATCH
SB 867	Allen	\$2 billion bond for clean energy including transmission + distribution, EV charging, fed matching, and long-duration storage	2-year	WATCH
REGIONALIZATION				
AB 538	Holden	Authorizes the formation of a western regional transmission organization (RTO)	2-year	WATCH
ELECTRIC VEHICLES				
SB 233	Skinner	Convenes a workgroup to examine challenges and opportunities of bidirectional capabilities; CARB can require all new vehicles be bidirectional capable	2-year	WATCH
BROWN ACT				
SB 537	Becker	Permits local agencies, like EBCE's board, to continue teleconference flexibilities given during the COVID state of emergency, but only if they are located 40 miles away.	2-year	WATCH



Staff Report Item 15

TO: East Bay Community Energy Board of Directors

FROM: Jim Dorrance, Power Resources Manager

SUBJECT: SunZia Wind Project Contract Approval (Action)

DATE: October 18, 2023

Recommendation

Adopt a Resolution authorizing the Chief Executive Officer to execute an Agreement with contracting entity SunZia Wind PowerCo, LLC for the SunZia Wind Project.

Background and Discussion

The 2023 Long-Term Resource Request for Offers (RFO) is East Bay Community Energy's (EBCE) fourth long-term contract solicitation. The RFO was launched in March 2023. The RFO is seeking several hundred megawatts (MW) of contracts with renewable energy and battery storage projects with a preference for projects located in California, and more preferentially, those located in Alameda or San Joaquin County. EBCE's objective is to drive investments in new renewable and energy storage projects within our jurisdiction and throughout California, while securing affordable resources to manage future power price risk. EBCE is currently evaluating the responses and negotiating agreements with some of the offer submittals. EBCE administered the RFO and completed analysis using internal tools and the cQuant valuation platform to calculate the net present value of proposed projects and determine the optimal portfolio to meet the objectives of the RFO. All of these contracts will be used to hedge EBCE against price fluctuation in the California Independent System Operator (CAISO) energy markets and they will contribute to procurement mandates issued by the California Public Utilities Commission (CPUC).

The SunZia Wind Project contract is a 15-year agreement for a 150 MW share of a 3,515 MW project located in New Mexico and providing renewable wind energy and Resource Adequacy to the state of California with an expected online date in

September of 2026. The project will provide renewable energy for EBCE customers, reliability to the California grid from the project capacity through Resource Adequacy and the energy will benefit EBCE as a hedge against price changes in the CAISO energy markets. During EBCE's contract life, the SunZia project may be financially restructured into two separate wind farms. If this happens, EBCE's contract would be assigned and turn into two separate agreements containing the same terms as those in the original document.

Attachments

- A. Resolution authorizing the Chief Executive Officer to execute an Agreement with contracting entity SunZia Wind PowerCo, LLC for the SunZia Wind Project
- B. PowerPoint Presentation

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT WITH CONTRACTING ENTITY SUNZIA WIND POWERCO, LLC FOR THE SUNZIA WIND PROJECT

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. The city of Lathrop, located in San Joaquin County, was added as a member to EBCE and party to the JPA in October of 2023.

WHEREAS EBCE issued the 2023 Long-Term Resources request for offers (RFO) in March 2023; and

WHEREAS SunZia Wind PowerCo, LLC, proposed a 150 MW share from a larger project wind energy project located in New Mexico; and

WHEREAS the project is expected to be operational by September 30, 2026, and will provide renewable wind energy and associated environmental attributes and Resource Adequacy for the term of fifteen years.

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 execute an agreement, which may later be assigned into two agreements, with contracting entity SunZia Wind PowerCo, LLC for the SunZia Wind Project.

ADOPTED AND APPROVED this 18th day of October, 2023.

Elisa Marquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

OCTOBER, 2023

2023 Long-Term Resource RFO: Overview and Update



- Solicitation Overview
- Participation
- Evaluation Process
- Challenges in Marketplace
- Next Steps
- Reminder: Portfolio Summary

Solicitation Overview

Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable and clean energy sources;
- Meet IRP Near- and Mid-Term Resource Adequacy Reliability Procurement mandates;
- Meet current and future CPUC compliance obligations;
- Create new renewable energy projects to deliver PCC1 RECs
- Contract low-cost energy hedges to compliment existing portfolio
- Partner with SJCE for efficiency, to minimize expenses, and lead the market in contract terms.

Project Characteristics

Facilities:

- Location: Projects may be within or outside of California. All energy must be deliverable to CAISO & must provide RA
- Construction Status: Energy and related products may come from new resources or add incremental capacity to existing resources.

Capacity:

- Minimum Contract Capacity: 5 MW
- Maximum Contract Capacity: none

Delivery Date:

- Energy and RPS attribute delivery must be within calendar years 2024 through 2030 with a preference for projects that begin delivery earlier within this window.

Contract Duration:

- 10-20 year durations

Technology:

- Renewables, Large Hydro
- Storage – short or long duration; any technology

Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered;
- Evaluated combinations of projects to achieve desired volume targets;
- Typically prioritize project risk, location, workforce development, economics, and other characteristics; limited ability to do so in this RFO due to limited offers in earlier years;
- Encouraged RFO participants to be creative and provide proposal variations on individual projects and include battery storage.

Solicitation Overview - Eligible Products

Attachment Staff Report Item 15B

Product #	Product Name	Description	Example
Product 1	As-Available RPS Product	New or incremental capacity to an existing stand-alone PCC1-eligible generating resource	solar, wind, geothermal, small hydro or ocean (thermal, wave, or current)
Product 2	As-Available RPS plus Energy Storage	New or incremental capacity to an existing stand-alone PCC1-eligible generating resource with co-located energy storage	Same as above plus storage with 2-hr, 4-hr, or 4-hr+ duration capability
Product 3	Firm or Shaped RPS Product	New PCC1-eligible generating resources; likely paired with energy storage	Energy delivered during specific hours
Product 4	Stand-Alone Energy Storage Toll or RA-Only offer	Energy storage may offer a full product “tolling” structure contract. RA-only offers <i>not</i> accepted in this RFO	Any storage technology with 2-hr, 4-hr, or 4-hr+ duration capability

Participation

More robust project offering than 2022 RFO, comparable to 2020 RFO. 72 unique project sites; 195 project variations (as compared to 44 sites; 185 variations in 2022 RFO)

All 4 products that were solicited were offered

Offers included solar, wind, and battery storage

Projects based in 6 different states (CA, AZ, ID, NM, NV, WY); predominantly CA

**6 projects in EBCE service territory; only one of positive economic value*

- **Evaluation Rubric scored 3 areas:**
 - Counterparty Execution, Offer Competitiveness, and Project Development Status
 - Multiple items under each area
- **Two reviewers were assigned to each project.**
- **Staff reviewed all submitted information and provided scores for all categories and NPV.**
 - Each item has 100 point max. at its own weighting.
 - Term Sheet Markups were scored by one assigned reviewer.
 - NPV scores were directly incorporated into overall project score with a weighting of 55%.
 - The Net Present Value was calculated based on simulations on 6 different forward curves
 - For *each* forward curve we took a weighted average of the P5 (50%), P50 (30%), and P95 (20%); and then took a simple average across the 6 curves
 - We normalized this number on a \$/MW basis and the projects were then assigned a 0-55 score based on the NPV distribution
 - Other factors considered in qualitative evaluation were Counterparty Execution Risk (20 points), Development Status Risk (20 points) and Local Business Enterprise (4 points) and Small Business Enterprise (1 point)
- **Scoring and rubric were similar to the selection process for previous RFOs**
 - Previous RFOs used 3 forward curves, this RFO featured 6 curves each representing a unique scenario
 - Minor changes were made to weighting of local projects, including addition of points for small businesses

Challenges in the Marketplace

Attachment Staff Report Item 15B

- Ongoing supply chain disruption & delays
- Uncertainty related to future tariffs for core components
- Result: suppliers of core components pricing using Index structure; many Project Developers unwilling to take on price risk thus requiring pricing using index also or extreme mark-ups in price to cover risk
- General: prices for generation and storage resources have increased 30-40% since ~2020.

Projects Proposed for Execution

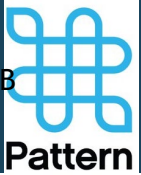
Attachment Staff Report Item 15B

Seeking approval for 1 contracts:

Wind power purchase agreement (PPA) submitted into EBCE and SJCE's joint 2023 Long-Term Resource RFO

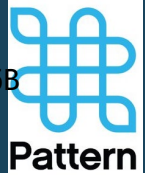
- 15-year, 150 MW contract for energy, environmental attributes, and resource adequacy from a wind facility in New Mexico with Pattern Energy. Expected to be operational September, 2026.

Pattern Energy Project Details



- Selected via the 2023 EBCE-SJCE Long-Term Resource RFO
- Contract for 150 MW of nameplate capacity including energy, environmental attributes, and Resource Adequacy from wind facility in Lincoln, Torrance, & San Miguel counties, New Mexico
- Total project size is 3,515 MW
- 15-year contract
- Expected Commercial Operation Date is September 30, 2026
- Project has an executed interconnection agreement and site control.
- Committed toward paying prevailing wages and seeks union labor to the extent available in New Mexico.
- The contracting entity under SunZia Wind PowerCo LLC.

Pattern Energy - Company Overview



- Pattern Energy is one of the world's largest privately-owned developers and operators of wind, solar, transmission, and energy storage projects
- Founded in 2009, Pattern's operational portfolio includes 30 renewable energy facilities that use proven, best-in-class technology with operating capacity of 6 GW in the United States, Canada, and Japan
- Pattern has a strong track record in CA and experience with CCAs, including EBCE. Projects include:
 - Tecolote Wind, New Mexico with EBCE (100 MW)
 - Duran Mesa Wind, New Mexico with SVCE and CCCE (200 MW)
 - Grady Wind, New Mexico with CCCE and SMUD (220 MW)
 - Hatchet Ridge Wind, Shasta County with PG&E (101 MW)
 - Ocotillo Wind, Imperial County with SDG&E (265 MW)

- Complete negotiations of projects under consideration. Anticipate presentations to Board through winter
- Assess projects as they hit key milestones and mature further.
- Update filing to CPUC on status of 2021-2023 and 2023-2026 Electric Reliability Requirements due December 1, 2023.
- CPUC's 2024 IRP cycle provides formal opportunity for portfolio review and analysis of open position, cost and risk. Further engagement with board and community as part of IRP process.

Portfolio Summary

Project Name1	Project Name2	Developer	Type	Nameplate Capacity	COD	Term (Years)	Technology	County	State
Altamont	SHWEC	Greenbacker	RPS	57.5	7/2/2021	20	Wind	Alameda	CA
Rosamond Central	Golden Fields	Clearway	RPS	112	12/22/2020	15	Solar	Kern	CA
Pattern	Tecolote	Pattern	RPS, no RA	100	12/20/2021	10	Wind	Guadalupe & Torrance	NM
Luciana	Tulare	Idemitsu	RPS	56	4/30/2022	15	Solar	Tulare	CA
Henrietta D	Henrietta	Convergent	Storage	10	12/2/2021	15	Storage	Kings	CA
Daggett South	Daggett	Clearway	RPS+Storage	50	9/5/2023	15	Solar + Storage	San Bernadino	CA
RE Scarlet	Sonrisa	EDPR	RPS+Storage	100	12/15/2023	20	Solar+Storage	Fresno	CA
Oberon	Oberon	Intersect	RPS+Storage	125	1/1/2024	15	Solar	Riverside	CA
Edwards Solar II	Edwards	Terra Gen	RPS	100	Q2 2024	15	Solar	Kern	CA
Sanborn	Sanborn	Terra Gen	Storage	47	Q2 2024	12	Storage	Kern	CA
Tumbleweed	Tumbleweed	REV Renewables	Storage	50	6/1/2024	15	Storage	Kern	CA
Kola	Kola	NextEra	Storage	125	4/1/2025	20	Storage	San Joaquin	CA
Fervo	Corsac Station	Fervo	RPS	40	2/1/2030	15	Geothermal	Churchill	NV