

**F.6 Consideration of Alameda County's Request that the City of Newark: (1) Introduce an Ordinance Approving the Implementation of a Community Choice Aggregation ("CCA") for the City of Newark; and (2) Adopt a Resolution Authorizing Formation of and Membership in the "East Bay Community Energy Authority," a Joint Powers Authority to Govern the Operation of the CCA – from City Manager Becker and City Attorney Benoun. (INTRODUCTION OF ORDINANCE) (RESOLUTION)**

**Summary** – In June 2014, the County of Alameda allocated \$1.32 million to explore the creation of a countywide Community Choice Aggregation ("CCA") program, which would offer an alternative energy source to power acquired by PG&E. The County retained several consultants to evaluate the feasibility of such a program. The County also assembled a Steering Committee consisting of approximately 40 members, including a representative from each city within Alameda County and stakeholders from various environmental, labor, and social justice organizations. Councilmember Hannon served as the City of Newark's representative to the Steering Committee during this process.

The City Council has received many presentations on this item, including presentations from County staff and their consultants in April and October of this year, a discussion with the City Attorney on the draft Joint Powers Agreement back in July, and a detailed work session on October 27<sup>th</sup>.

The technical studies authored by the County's consultants conclude that the program is viable and that the CCA, if approved, would be able to provide electrical rates that are competitive with PG&E.

After several rounds of edits made at the request of the various cities and stakeholder organizations, the Joint Powers Agreement is now in its final form and was approved by the Board of Supervisors last month.

The County has asked that all cities within Alameda County (with the exception of the City of Alameda, which maintains its own electrical utility and is therefore precluded from joining the CCA by State law) to consider joining the East Bay Community Energy Authority that would govern the operation of a Countywide CCA.

**Background** – Authorized by California law in 2002, Community Choice Aggregation ("CCA") enables cities and county governments to pool the electricity demand within their jurisdictions in order to procure and/or generate electrical power supplies on behalf of the residents and businesses in their communities. CCA's offer a choice to electric power procured by PG&E.

As articulated by the County, primary reasons for pursuing a CCE program include:

- (1) The ability to significantly reduce greenhouse gas emissions;
- (2) Offering customers an energy choice and competitive electrical rates; and
- (3) Economic development benefits including jobs creation associated with the development of local power and new energy programs in the region.

The CCA procures and/or generates electricity for its customers while PG&E continues to deliver power to homes and businesses, handles customer billing, and maintains the grid. Customers can choose whether their power should be purchased and/or generated by PG&E or by the CCA. If the customer uses CCA energy, then PG&E will continue to charge its transmission fee (as it always has done) but also impose a “PCIA” charge to the customer. The PCIA charge – Power Charge Indifference Adjustment – is effectively an “exit fee” designed to cover generation costs incurred by PG&E prior to the customer changing to the CCA and to assure that PG&E’s remaining customers are not adversely affected by the loss of customers to the CCA.

Prior to launch of the program and as required under State law, the CCA should give customers two (2) notices within sixty (60) days indicating that he/she can “opt-out” of the upcoming program. If the customer does not opt-out, then, pursuant to State law, the customer would be automatically enrolled in the new energy program. After enrollment, the customer should receive two (2) additional notices, both indicating that she/he can opt-out at no cost.

There are currently five (5) operational CCA’s in California, including Marin Clean Energy, Sonoma Clean Power, CleanPowerSF (San Francisco), Lancaster Choice Energy and Peninsula Clean Energy. Several more throughout the state are currently being considered for development.

The County began exploring the concept of a Countywide CCA over two years ago. Phase 1 examined the feasibility of a CCA by conducting a Technical/Feasibility Analysis and forming a CCA Steering/Advisory Committee consisting of over two dozen environmental, social justice, and labor organizations. That portion of the process is now concluded. The County has adopted a “final” Joint Powers Agreement and voted to be an “Initial Participant” in the program. If other cities join, then Phases 2 and 3 will be launched, which would further develop the CCA that could lead to a “go live” date by the fall of 2017. These concepts are discussed in turn below.

## **Discussion**

### Technical Study

Oakland based consulting firm MRW & Associates prepared the technical study. Using electrical load data for the most recent two-year period, along with predictions of future market conditions and energy prices, the study projects estimated energy costs for a 13-year period, between 2017 – 2030. As indicated by the County, the analysis does the following:

- Quantifies the electric loads that the CCA could serve;
- Estimates the costs to start-up and operate the CCA;
- Assess the costs of reducing greenhouse gas (GHG) emissions using the CCA;

- Examines the varying levels of renewable power and an analysis of in-county renewable generation potential;
- Compares CCA rates with PG&E's rates; and
- Calculates the macroeconomic impact and potential employment benefits of CCA formation in the County.

The analysis covered four (4) possible operational scenarios, specifically:

- (1) Scenario 1 – Simple Compliance with State of California 33% Renewable Portfolio Standard (RPS) by 2020 and 50% by 2030;
- (2) Scenario 2 – Accelerated Renewable Investment - 50% Renewable portfolio from the first year onward, plus additional amounts of emissions-free, large hydro power (not considered renewable under California guidelines) to reduce GHG emissions below projected PG&E's GHG estimates;
- (3) Scenario 3 – Aggressive Renewable Growth - The Renewable portfolio set at 50% in the first year and increased to 80% by the fifth year; large hydro could also make up a portion of the non-renewable component; and
- (4) Scenario 4 – Very Aggressive Local Renewable Investment – Similar to Scenario 2, but with an increased emphasis on in-County renewable development. It assumes that one-half of the CCA's total renewable energy goals would be met by in-County resources by the year 2030.

As described by the County, the report concludes that the scenario that offers the greatest *electric rate reduction* is Scenario 1. It invests the least in renewables overall and keeps the revenues savings in the hands of the ratepayers. Scenario 2 is close and it includes more renewable investment Statewide. Scenarios 3 and 4, by contrast, invest more heavily in renewables. Scenario 3 invests Statewide and generates the fewest jobs locally, but it maximizes renewable energy and GHG reduction. Scenario 4 generates the most local jobs.

The JPA Board of Directors will determine which scenario the CCA will employ.

#### Analysis by City's Consultant

The City retained Mr. Michael Pretto, of Aspen Environmental Group, to independently examine the technical study performed by MRW & Associates. A summary of his analysis is as follows:

- MRW is well qualified to perform the study;
- MRW's analysis is thorough and the results are consistent with the underlying assumptions;
- MRW appropriately notes risks and uncertainties that could affect forecast results; and
- Any forecast that concludes that one market segment, namely CCA customers vs. remaining PG&E customers, will have a continuing built-in price advantage is not likely

because over time both entities would work to adjust their rates or operations to insure competitiveness with each other.

The Technical Study, including its addendum and appendices, are attached to this staff report for review. (**Attachment 1**)

### Joint Powers Agreement

This CCA will be governed by a Joint Powers Agreement. Alameda County Counsel was the lead author of the Agreement and modeled it after various other CCA JPA Agreements. Several drafts and revisions of the Agreement were made in response to input from the cities and the labor, environmental, and social justice groups.

The final Agreement, as approved by the County, is attached for review (**Attachment 2**). Key provisions in the Agreement include:

- (a) *Separate Legal Entity*. The JPA Agreement establishes the Authority as a separate legal entity, meaning that member agencies do not assume obligations for the debts and liabilities of the Authority, except in limited circumstances.
- (b) *Board of Directors*. The Board of Directors consists of elected officials from each member agency (including an alternate). Each agency nominates its own Director.
- (c) *Community Advisory Committee*. A community advisory committee consisting of nine members will advise the JPA Board on “all” matters relating to the operation of the CCA. The selection of the committee members will be decided by the JPA Board, however the Board should take into account that the committee should represent a “diverse cross-section of interests, skill sets and geographic regions.”
- (d) *Ex-Officio Board Member*. The chairperson of the advisory committee will serve as a non-voting, “ex officio member” of the Board of Directors. This person can take part in the discussions and deliberations of the Board, but is not entitled to vote on any item.
- (e) *Early Termination*. If the CCA is unable to provide total electrical rates lower than PG&E, is unable to provide electricity in a manner that has a lower greenhouse gas emissions rate than PG&E, or uses less renewable energy than PG&E, then member agencies can withdraw without any financial consequences, provided the withdrawal occurs within thirty (30) days of the final report comparing the electrical rates, GHG, and renewable energy.
- (f) *Withdrawal After Program Launch*. The Agreement allows agencies to withdraw after the program launch upon 180 days’ notice. However, any withdrawing member “shall”

be responsible for “paying its fair share” of costs incurred by the Authority as a result of the withdrawal.

- (g) *Joining After Launch.* Any member agency that decides to join after the program launches could pay a “membership fee” (determined by the JPA Board) and may have to satisfy “any condition” imposed by the Board. The membership would also have to be approved by the Board and is subject to the voting process described in detail below.

### Voting Structure of the Joint Powers Authority

The JPA Agreement provides for two types of votes: (1) a “percentage vote”; and (2) a “voting shares vote”.

#### (1) Percentage Vote (One Vote Per Director)

A “percentage vote” is defined as an affirmative vote of a majority of the Board of Directors. In other words, each agency that each Director represents receives one vote. Any action taken by the Board must be passed by a simple majority. If the proposed action does not receive a majority then the proposed action does not pass and cannot be brought back to vote under the voting shares vote.

However, if a matter is approved by a percentage vote, then any three (3) Directors may request that a “voting shares vote” be immediately held.

#### (2) “Voting Shares Vote” (Director’s Vote Weighted Based on Energy Use)

A “voting shares vote” is a weighted vote by the Board using a formula based on the energy use within each Director’s jurisdiction. Stated differently, jurisdictions with higher energy use will receive a larger weighted vote. To approve an action that was taken by a percentage vote, the voting shares vote must be more than 50%. If the 50% threshold is not met under this voting shares vote, then the action taken by the Board under the percentage vote does not pass.

In other words, this “voting shares vote” serves as a “veto” that could potentially override a majority percentage vote. This is true even in situations in which an action passes under a percentage vote by an 11-3 margin, but if those three Directors represent a majority of the energy use they could veto the action by calling for a voting shares vote.

If each agency elects to participate in the energy program, then the voting shares will be weighted as follows:

<u>JURISDICTION</u>	<u>PROJECTED ENERGY USE (MWh)</u>	<u>VOTING SHARES VOTE</u>
Oakland	2,005,388	24.88 %
Fremont	1,306,713	16.18 %
Hayward	813,048	10.11 %
Berkeley	684,455	8.48 %
Pleasanton	529,114	6.55 %
San Leandro	516,830	6.40 %
Unincorporated	513,917	6.37 %
Livermore	498,218	6.17 %
Union City	356,019	4.30 %
Dublin	297,219	3.68 %
Newark	258,720	3.20 %
Emeryville	203,591	2.52 %
Albany	57,726	0.71 %
Piedmont	32,768	0.41 %

The draft JPA also recognizes that the Authority's membership may change as agencies decide to join or withdraw. Any change in the membership would affect the voting balances above.

The City of Newark had expressed a preference for a four (4) Director trigger, in addition to a supermajority weighted vote. Smaller cities (including the City of San Leandro) joined in this request, but the Board of Supervisors adopted a three (3) Director trigger without a supermajority weighted vote as a compromise to other larger cities (including Hayward, Oakland and Fremont) that wanted a two (2) Director trigger.

Finally, it should also be noted that any amendments to this voting structure requires a 3/4 supermajority vote instead of a 2/3 supermajority vote, which is required to amend any other provision in the Agreement.

#### Additions to the Joint Powers Agreement

Less than 10 days prior to the date the Board of Supervisors were slated to consider approving the Agreement, the stakeholder organizations submitted several edits that were incorporated into the final version. Three substantive provisions are discussed below in turn.

##### (1) Business Plan Requirement (Section 5.4)

Under this new section, the Authority is obligated to prepare a Business Plan within eight (8) months. The plan should cover the first five (5) years of operation and should include a roadmap

for the “development, procurement, and integration of local, renewable energy resources.” The plan should describe how the CCA will foster local economic benefits, such as job creation and community energy programs, including identifying opportunities for local power development and detailing employment and labor standards.

(2) Authority Shall Provide Energy Primarily from Category 1 Resources

Another added section mandates the Authority to provide its customers with energy “primarily” derived from Category 1 eligible resources. By means of background, there are three types of power. A basic description is as follows:

Category 1 – Power that is eligible, renewable energy produced in California. In order to be eligible, the generator has to comply with strict reporting procedures with the California Energy Commission.

Category 2 – Power that is eligible, renewable energy produced out of State that is transmitted to California.

Category 3 – Power that is unbundled and does not qualify as Category 1 or 2.

(3) Two Clauses Relating to Labor

Finally, the last addition contains two clauses relating to labor. The verbiage is as follows:

“The Authority shall remain neutral in the event its employees, and the employees of its subcontractors, if any, wish to unionize.” (*Section 5.5*)

“The Authority shall 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.” (*Recital Section 6.g*)

According to the City’s consultant, Mr. Pretto, the impacts of these provisions are likely to be minimal. With regards to the Business Plan requirement, although the timing is incredibly short (indeed, many jurisdictions requested an 18 month implementation deadline), many of the requirements for the business plan will be required for other governing documents anyways, including the implementation plan that is required by the PUC, so the efforts to create the Business Plan may not be overly burdensome. Additionally, County staff is in the process of drafting an RFP for a consultant for the business plan.

With regards to the Category 1 requirement, the State has mandated increases in renewable power by the year 2020 anyways, so the requirement of procurement of Category 1 eligible power does not appear to be particularly onerous.

Finally, with regards to the labor clauses, the modified language is not expected to have any material impact because any possible difference in power project labor costs is extremely unlikely to affect the Authority's competitive position.

A red-line version of the Joint Powers Agreement showing the insertion of these provisions is attached to this staff report as **Attachment 3**.

### JPA Formation and Implementation; Energy Procurement; Community Outreach

If the City opts to join the program, then it will need to nominate a representative to sit on the JPA Board. The Board could meet as soon as January and will likely act as quickly as possible, including retaining additional experts to focus on the energy analytics and procurement, marketing, and data management. The Board will also need to hire staff, including a Chief Executive Officer and General Counsel.

According to the County, the Authority would also issue an RFP for wholesale energy procurement, adopt an operating budget, prepare its implementation plan, negotiate power contracts, and develop and operate a call center. The Board would also engage in an aggressive marketing campaign, including developing a brand and logo, developing a multi-lingual website (including a rate calculator and ability to opt-out of the program), and developing brochures.

The County's goal is to launch the program in the fall of 2017.

**Conclusion** – The County has asked that all cities within Alameda County (except the City of Alameda) consider joining the East Bay Community Energy Authority to start a countywide Community Choice Aggregation energy program.

In responding to the County's request, the City has three options:

- (1) Join the CCA at this time;
- (2) Decline to participate in the program; or
- (3) Decline to join the program at this time, evaluate the viability of the program once it is implemented and established, and, if the situation warrants, consider joining at a future date ("wait and see" approach).

On the one hand, there are numerous benefits to joining the program at this time, including the possibility of lowering electrical rates, increasing renewable energy, potential for reducing greenhouse gas emissions, and promoting local jobs. There is also the advantage of having an



alternative to power generated and/or procured by PG&E, which, in theory, should drive competitiveness and hopefully could lead to even lower electrical costs for Newark residents and businesses. Finally, if the City joins the Authority now, then the City would not pay a membership fee.

On the other hand, if Newark joins the CCA, then there is little doubt that the City of Newark's influence in the operation of this Authority will be minimal, considering that Newark's weighted vote would be 3.2% (assuming all other public agencies join). There is also a concern that the business plan – which is required to be adopted within 8 months – could be hastily drafted because of this tight timeframe. Additionally, if Newark joins the CCA, then all residents and businesses would be automatically enrolled into this new program, unless the customer opts-out. While staff understands that State law requires automatic enrollment (unless opted-out) in forming new CCA's, staff is concerned that residents and businesses may not realize that their energy supplier has changed. Finally, if the City were to use the “wait and see” approach, then there is the possibility that the City could pay a membership fee to join at a later date, although City staff is unaware of any membership fee charged by a CCA to a newly joining jurisdiction.

Staff recommends that the Council consider these benefits and drawbacks as presented by staff, as well as others that the Council has identified, and determine whether the benefits of joining this new program outweigh the drawbacks.

## **Attachments**

Attachment 1: Technical Study

Attachment 2: “East Bay Community Energy Authority Joint Powers Agreement”

Attachment 3: Red-line edit of “East Bay Community Energy Authority Joint Powers Agreement” showing recent additions

Attachment 4: Ordinance Authorizing the Implementation of a CCA Program

Attachment 5: Resolution Approving Joint Powers Agreement

**Action** - It is recommended that the City Council consider the County's request to: (1) Introduce an Ordinance Authorizing the Implementation of a Community Choice Aggregation Program (“CCA”) for the City of Newark; and (2) Adopt a Resolution approving an agreement to participate in a Joint Powers Agency for a Community Choice Aggregation Program in Alameda County.