



**REGULAR MEETING of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)  
Thursday, August 11th, 2016**

San Mateo County Office of Education, Corte Madera Room  
101 Twin Dolphin Drive, Redwood City, CA 94065  
6:30 p.m.

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Carolyn Raider, Agenda Administrator, at least 2 working days before the meeting at (650) 363-4739 and/or [craider@smcgov.org](mailto:craider@smcgov.org). Notification in advance of the meeting will enable the PCEA to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.*

*If you wish to speak to the Board, please fill out a speaker's slip located on the tables as you enter the Board meeting room. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of PCEA staff who will distribute the information to the Board members and other staff.*

**CALL TO ORDER / ROLL CALL**

**PUBLIC COMMENT**

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are as follows: 1) Not otherwise on this meeting agenda; 2) Listed on the Consent Agenda and/or Closed Session Agenda; 3) Chief Executive Officer's or Staff Report on the Regular Agenda; or 4) Board Members' Reports on the Regular Agenda. Public comments on matters not listed above 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 requested to complete a speaker's slip and provide it to PCEA staff. Speakers are customarily limited to two minutes, but an extension can be provided to you at the discretion of the Board Chair.

**ACTION TO SET AGENDA and TO APPROVE CONSENT AGENDA ITEMS**

This item is to set the final consent and regular agenda, and for the approval of the items listed on the consent agenda. All items on the consent agenda are approved by one action.

## **CLOSED SESSION**

(The Board will adjourn to closed session to consider the following items at the beginning of the agenda, or at any time during the meeting as time permits. At the conclusion of closed session, the Board will reconvene in open session to report on any actions taken for which a report is required by law.)

### **1. CONFERENCE WITH LABOR NEGOTIATORS**

Agency Designated Representatives: Dave Pine and David Silberman

Unrepresented Employee: Chief Executive Officer

### **2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Property: 1010 Doyle, Menlo Park

Agency Negotiators: Jan Pepper, David Silberman

Negotiating Party: Lex Machina, Inc.

Under Negotiation: Price/Terms of Lease

## **REGULAR AGENDA**

1. Chair Report (Discussion)
2. CEO Report (Discussion)
3. Marketing and Outreach (Discussion)
4. Citizen's Advisory Committee Update (Discussion)
5. Regulatory Update (Discussion)
6. Board Members' Reports (Discussion)

## **CONSENT AGENDA**

7. Approval of the Minutes for the July 28th, 2016 Meeting (Action)
8. Approve an Agreement between Troutman, Sanders and the Peninsula Clean Energy Authority for Provision of Legal Services in an Amount Not to Exceed \$175,000

(Action)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Office of Sustainability, located at 455 County Center, 4th Floor, Redwood City, CA 94063, for the purpose of making those public records available for inspection. The documents are also available on the PCEA's Internet Web site. The website is located at: <http://www.peninsulacleanenergy.com>.



**REGULAR MEETING of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)  
Thursday, July 28th, 2016  
MINUTES**

San Mateo County Office of Education, Corte Madera Room  
101 Twin Dolphin Drive, Redwood City, CA 94065  
6:30pm

**CALL TO ORDER**

Meeting was called to order at 6:30 pm.

**ROLL CALL**

**Present:** Dave Pine, County of San Mateo, *Chair*  
Carole Groom, County of San Mateo  
Rick DeGolia, Town of Atherton  
Sigalle Michael, City of Burlingame  
Joseph Silva, Town of Colma  
Michael Guingona, City of Daly City  
Gary Pollard, City of Foster City  
Deborah Penrose, City of Half Moon Bay  
Laurence May, Town of Hillsborough  
Catherine Carlton, City of Menlo Park  
Ann Schneider (alternate), City of Millbrae  
John Keener, City of Pacifica  
Jeff Aalfs, Town of Portola Valley, *Vice Chair*  
Marty Medina, City of San Bruno  
Cameron Johnson, City of San Carlos  
Rick Bonilla (alternate), City of San Mateo  
Pradeep Gupta, City of South San Francisco

**Absent:** Charles Stone, City of Belmont  
Lori Liu, City of Brisbane  
Larry Moody, City of East Palo Alto  
Ian Bain, City of Redwood City  
Daniel Yost, Town of Woodside

**Staff:** Jan Pepper, Chief Executive Officer  
Kathy Meola, General Counsel

Gordon Tong, Office of Sustainability  
Carolyn Raider, Office of Sustainability  
Kirsten Pringle, Office of Sustainability  
Kirby Dusel, Pacific Energy Advisors  
Shawn Marshall, LEAN Energy

**A quorum was established.**

**PUBLIC COMMENT**

There was no public comment on items not on the agenda.

**ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS**

Motion to approve the consent agenda and set the agenda – Made / Seconded: Gupta/ Bonilla

**Motion passed 15-0 (Absent: Stone, Liu, Moody, Bain, Yost, May, Schneider).**

**REGULAR AGENDA**

**1. CHAIR REPORT**

Chair Pine mentioned that there is a significant amount of buzz about Peninsula Clean Energy lately.

**2. CEO REPORT**

Jan Pepper—Chief Executive Officer— reported that PCE is hiring for three positions: Board Clerk, Director of Marketing and Public Affairs, and Director of Power Resources. Ms. Pepper reported which cities have chosen to opt up to ECO100. Ms. Pepper provided an update on presentations by PCE staff, the new website, and enrollment notices.

**3. APPROVE NET ENERGY METERING RATE SCHEDULE (ACTION)**

Kirby Dusel – Pacific Energy Advisors – provided an overview of Net Energy Metering (NEM) and explained how a NEM tariff would work for PCE. Mr. Dusel explained that the proposed NEM tariff offers 1 cent/kWh above the current market price to surplus generation, credits generated will offset usage, and additional credits will be tracked and carry over each month. Annually, customers with excess generation will receive a check for excess credits.

Attached hereto as Exhibit A to the minutes is a revised NEM Rate scheduled as amended and approved at the meeting."

Public comment: Ted Howard, James Tuleya

Motion to approve with the following amendment:

- **PCE Annual Cash-Out:** During the April billing cycle of each year, all current PCE NEM customers with a credit balance of more than \$100 will receive a check from PCE as compensation for the accrued credit balance; this credit balance will be determined as of the customer's March billing cycle. Customers will have an equivalent credit removed from their NEM account balance at the time of check issuance. Customers who have a credit balance of less than \$100 will have their credits carried over as a bill credit for use in subsequent billing period(s). Customers who close their electric account through PG&E or move outside of the PCE service area prior to the April billing cycle of each year will have their account cashed out at that time.

Made / Seconded: Gupta/Carlton

**Motion passed 17-0 (Absent: Stone, Liu, Moody, Bain, Yost, Johnson).**

**4. ADOPT A NET ENERGY METERING PHASE-IN SCHEDULE FOR CUSTOMERS AS FOLLOWS: A BI-MONTHLY ENROLLMENT SCHEDULE WHEREBY NET METERING CUSTOMERS ARE ENROLLED BASED ON THEIR ANNUAL TRUE-UP DATE, WHICH WILL BE EITHER THE SAME MONTH OR THE MONTH IMMEDIATELY AFTER THEIR ANNUAL TRUE-UP DATE (ACTION)**

Ms. Pepper provided an overview of the proposed NEM phase-in schedule, designed to generally maximize the benefits for customers by enrolling them in their true-up month or the month after. PCE will be enrolling NEM customers bimonthly based on their PG&E true-up date. Ms. Pepper remarked that other CCA's have experienced high dissatisfaction with NEM customers who have been enrolled before their annual true-up and have lost credits. To alleviate this concern and high opt-out rates with NEM customers, PCE will schedule four additional enrollment phases with PG&E at an additional cost of \$16,000 (\$4,000 per enrollment phase).

Public Comment: James Tuleya

Motion to approve– Made / Seconded: Schneider/Penrose

**Motion passed 17-0 (Absent: Stone, Liu, Moody, Bain, Yost, Johnson).**

**5. MAKRETING AND OUTREACH (DISCUSSION)**

Ms. Pepper presented on the outreach that has been conducted and the upcoming schedule of geo-targeting advertisements. Ms. Pepper explained that PCE will be holding two advocates trainings workshops where volunteers will learn how to speak with businesses during the PCE merchant walks. Ms. Pepper asked that if Board members could sign up and distribute the information to their networks.

**6. REGULATORY UPDATE (DISCUSSION)**

Shawn Marshall – Executive Director of LEAN Energy U.S.—discussed the status of the Power Charge Indifference Adjustment (PCIA) and how the closure of Diablo Canyon may affect Community Choice Aggregation programs.

**7. BOARD MEMBERS' REPORTS**

None

**ADJOURNMENT**

Meeting was adjourned.

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Chair

Attest:

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Secretary



**PENINSULA CLEAN ENERGY**  
**JPA Board Correspondence**  
**General Counsel**

**DATE:** August 5, 2016  
**BOARD MEETING DATE:** August 11, 2016  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable PCE Joint Powers Board

**FROM:** John C. Beiers, County Counsel/General Counsel  
David A. Silberman, Chief Deputy County Counsel/General Counsel

**SUBJECT:** Approve an Agreement Between Troutman, Sanders and the Peninsula Clean Energy Authority for Provision of Legal Services

**RECOMMENDATION:**

Adopt a Resolution authorizing the General Counsel to execute an agreement with Troutman Sanders in an amount not to exceed \$175,000 for legal services

**BACKGROUND:**

The County Counsel's Office provides legal services to the Peninsula Clean Energy (PCE) Authority pursuant to a contract approved by the Board March 24, 2016.

Pursuant to that agreement, the County Counsel serves as General Counsel to the Board and has authority to retain services of outside counsel in an amount not to exceed \$25,000.

The County Counsel's Office previously advised this Board in open session that it had retained Troutman Sanders to assist it in negotiating legally complex power purchase agreements and contracts effectuating creation of a "multi-party lockbox". The County Counsel's Office has also noted that the initial retention agreement was with the County (for the benefit of Peninsula Clean Energy), a structure necessary until Peninsula Clean Energy completed its financing and had funds available to retain outside counsel.

**DISCUSSION:**



To date, Peninsula Clean energy has incurred \$168,033 in necessary legal expenses with Troutman Sanders. The first \$100,000 was advanced by the County of San Mateo, leaving a remaining balance of \$68,033 through June 30, 2016. A relatively small invoice is expected for the month of July and relates to the negotiation of resource adequacy agreements.

This Board is being asked to authorize execution of a retention agreement with Troutman Sanders for \$175,000. This amount will be sufficient to pay existing invoices and allow flexibility to utilize Troutman Sanders services in negotiation of Phase II power purchase agreements.

**RESOLUTION NO. \_\_\_\_\_**

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF  
CALIFORNIA**

\* \* \* \* \*

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE AN  
AGREEMENT WITH TROUTMAN SANDERS IN AN AMOUNT NOT TO EXCEED  
\$175,000 FOR PROVISION OF LEGAL SERVICES**

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**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

**WHEREAS**, the Peninsula Clean Energy Authority ("Peninsula Clean Energy) was formed on February 29, 2016; and

**WHEREAS**, the JPA Agreement forming the Authority delegates to the Board the power to hire a General Counsel pursuant to Paragraph 3.3.2; and

**WHEREAS**, the San Mateo County Counsel's Office has been appointed General Counsel and has been delegated authority to retain outside legal services in amounts not to exceed \$25,000; and

**WHEREAS**, the General Counsel has determined it necessary to seek outside legal services related to negotiation of power purchase agreements and has retained Troutman Sanders on behalf of Peninsula Clean Energy for that purpose and is now asking the Board to execute a retention agreement not to exceed \$175,000; and

**WHEREAS**, a form of such agreement has been provided to the Board for its review and approval, reference to which should be made for further particulars.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the General Counsel of Peninsula Clean Energy is hereby authorized to execute the Agreement for legal services with Troutman Sanders in an amount not to exceed \$175,000.

\* \* \* \* \*

[CCO-113499]

August 01, 2016

VIA EMAIL

Peninsula Clean Energy Authority  
Attn. David A. Silberman  
Office of the San Mateo County Counsel  
400 County Center, 6th Floor  
Redwood City, CA 94063

**Re: Troutman Sanders LLP's Representation of Peninsula Clean Energy  
Authority**

Dear Mr. Silberman:

We are pleased that you have requested Troutman Sanders LLP (the "Firm") to provide legal services to Peninsula Clean Energy Authority and we thank you for the opportunity to be of assistance.

The purpose of this Engagement Letter (the "Agreement") is to verify your approval as to the scope of our engagement, the financial terms of our engagement, and all other aspects of this engagement, as follows:

1. Scope of Engagement. By means of this Agreement, Peninsula Clean Energy Authority is engaging the Firm to provide legal services in connection with the drafting, negotiation and finalization of power supply agreements and related ancillary documentation for the Peninsula Clean Energy Authority (hereinafter the "Engagement").

2. Fees and Hourly Rates. Our billing practice is to charge for our legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals involved. These hourly rates are based upon these professionals' experience, expertise, and standing. Our current hourly rates are in these ranges: partners \$385 - \$1,075; associates \$245 - \$697; and paralegals \$105-335. My rate for this work is \$625/hr. These rates are modified by us from time to time, and any new rates would be implemented immediately after they are adopted and would apply to legal services rendered after the effective date of the new rates which will be reflected on your bill.

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We believe that our hourly rates are comparable with the rates charged for the same kinds of work by lawyers and other professionals of similar experience, expertise and standing. We try to use associate and paralegal support on projects where appropriate, and we will be happy to discuss the staffing of your project with you.

We normally treat our hourly rates as guidelines and do not always merely multiply the time by the hourly rate to determine the proper fee. When billing, we review our computer-prepared time records carefully and make appropriate adjustments if we feel they are called for under the circumstances. In our experience, this manner of billing is customary for firms like ours, where work is performed by various professionals, many of whom are specialists in the type of work being undertaken.

We normally charge for all activities undertaken in providing legal services to you under this Agreement, including but not limited to the following: conferences, including preparation and participation; preparation and review of correspondence and other documents; legal research; court and other appearances; including preparation and participation; and telephone calls, including calls with you, other attorneys or persons involved with this matter, and governmental agencies. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person will charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. We will charge for travel time, both local and out of town.

This Agreement authorizes payment of fees of up to \$175,000 for legal services in connection with the Engagement. Unless otherwise agreed in writing, Peninsula Clean Energy Authority will not be obligated for fees in excess of such amount.

3. Additional Services and Outside Expenditures. Our legal representation may also involve additional services provided by vendors. We will obtain your advance approval before incurring any such additional services on your behalf. You will be required either to pay for these outside additional services directly, or to reimburse us if we make payment for these services on your behalf. We sometimes will make payment for, and then bill you for reimbursement of smaller items such as filing fees, photocopying by outside copying services, electronic discovery services, recording fees, messenger services, service of process, and court fees. When there are substantial expenditures involving vendors (such as for discovery management, document production, depositions, expert witnesses, exhibit preparation, or airfare) or substantial out-of-pocket expenditures (such as extended field expenses, large outside copying jobs, or jury fees), we will require either that you pay those sums to us before we expend them, that you provide an advance deposit for such expenditures, or that you directly contract with and pay the vendor. You will not be billed for any internal Firm costs incurred on your behalf, such as telephone (including long distance charges), telecopy charges, word processing, secretarial overtime, firm couriers, postage (including FedEx, UPS or similar overnight delivery services), printing and photocopying performed in-house.

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4. Monthly Statements and Payment Terms. Our practice will be to send a monthly statement of our charges for legal services and for reimbursement of payments made on our client's behalf for outside additional services. The detail in the monthly statement will inform you of the nature and progress of our work and of the charges and expenditures being incurred.

Unless otherwise agreed, each monthly statement is fully due and payable upon receipt, but in no event later than thirty days after its issuance date.

We specifically reserve the right to withdraw from representation of you and to cease performing immediately all services if we do not receive full payment of any amounts owed to us within thirty days of any statement.

5. Withdrawal From Representation. The attorney-client relationship is one of mutual trust and confidence. If you have any questions at all about the provisions of this Agreement, we invite your inquiries. We encourage our clients to inquire about any matter relating to our engagement agreements or monthly statements which may be in any way unclear or appear unsatisfactory. If you do not meet your obligation of timely payments or deposits under this Agreement, we reserve the right to withdraw from your representation on that basis alone, subject of course to any required judicial, administrative, or other approvals.

This Agreement is also subject to termination by either party upon reasonable notice for any reason. If there were to be such a termination, however, you would remain liable for all unpaid charges for services provided and expenditures advanced or incurred.

6. Duties Upon Termination of Active Representation. Upon termination of our active involvement in a particular matter for which we had previously been engaged, we will have no further duty to inform you of future developments or changes in law which may be relevant to such matter in which our representation has terminated. Further, unless you and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had been engaged. If your matter involves obtaining a judgment and such judgment is obtained, we will only be responsible for those post judgment services (such as recording abstracts, filing judgment liens, and calendaring renewals of judgments) as are expressly agreed to by you and the Firm in writing and for which you will be obligated to pay.

7. Document Storage Policies. The Firm's policy with regard to documents and other materials at the conclusion of a matter is to maintain them in storage for a period of no more than ten years. All documents and other materials in our file will then be destroyed or discarded without notice to you. Accordingly, if there are any documents or other materials you wish to have retrieved from your file at the conclusion of a matter, it will be necessary for you to advise us of that request to ensure that they are not destroyed.

8. Consent to Electronic Communications. In order to maximize efficiency in this matter, we intend to use state of the art communications devices to the fullest extent possible

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(e.g., E-Mail, document transfer by computer, cellular telephones, and facsimile transfers). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe the effectiveness involved in the use of these devices outweighs the risk of accidental disclosure. By signing this letter, you acknowledge your consent to the use of these devices.

9. Disclaimer of Guarantee. Nothing in this Agreement should be construed as a promise or guarantee about the outcome of any matter which we are handling on your behalf. Our comments about the outcome of your matter are expressions of opinion only. If we should provide you with an estimate of the fees and costs which may be incurred in connection with our representation of you, it is important that you understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be.

10. Future Matters. Unless otherwise agreed in writing between us, all other matters referred to us for representation shall be governed by the terms of this Agreement.

11. Entire Agreement. This Agreement contains all terms of the agreement between us applicable to our representation of you, and may not be modified except by a written agreement signed by both of us.

12. Future Conflict. Our undertaking to represent you in the above matters will not act as a bar so as to prevent us from representing any existing or future client with respect to a claim, litigation or transaction adverse to you, so long as in the course of our representation of you we have not obtained any information that would be adverse to your interests with respect to such claim, litigation or transaction.

13. Client. The Firm's clients for the purpose of our representation are only the persons and entities identified in this Agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any of their shareholders, partners, officers, directors, agents, or employees.

If this Agreement correctly sets forth your understanding of the scope of the services to be rendered to you by the Firm and if all of the terms set forth in this Agreement are satisfactory, then please sign this Agreement and return it to me so that we will be engaged as your legal counsel. If the scope of services described is incorrect or if the terms set forth are not satisfactory to you, please let us know in order that we can discuss either aspect.

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We look forward to working with you and thank you once again for the opportunity to be of service.

Sincerely,

TROUTMAN SANDERS LLP



Stephen C. Hall

I have read and understand the contents of this letter and consent to the Firm representing me on the terms set forth in this letter.

PENINSULA CLEAN ENERGY AUTHORITY:

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Name: David A. Silberman  
Title: Chief Deputy County Counsel