

**Regular Meeting of the Executive Committee of the
Peninsula Clean Energy Authority (PCEA)****AGENDA****Tuesday, October 12, 2021****10:00 a.m.****Zoom Link:** <https://pencleanenergy.zoom.us/j/83834724993>**Meeting ID:** 838-3472-4993 **Passcode:** 2075 **Phone:** +1(253)215-8782**NOTE: Please see attached document for additional detailed teleconference instructions.**

PCEA shall make every effort to ensure that its video conferenced meetings are accessible to people with disabilities as required by Governor Newsom's March 17, 2020 Executive Order N-29-20. 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 Nelly Wogberg, Board Clerk, at least 2 working days before the meeting at nwogberg@peninsulacleanenergy.com. Notification in advance of the meeting will enable PCEA to make best efforts to reasonably accommodate accessibility to this meeting and the materials related to it.

*If you wish to speak to the Executive Committee, please use the "Raise Your Hand" function in the Zoom platform or press *6 if you phoned into the meeting. If you have anything that you wish to be distributed to the Executive Committee and included in the official record, please send to nwogberg@peninsulacleanenergy.com.*

CALL TO ORDER / ROLL CALL**PUBLIC COMMENT**

This item is reserved for persons wishing to address the Committee on any PCEA-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. Members of the public who wish to address the Committee are customarily limited to two minutes per speaker. The Committee Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA and to APPROVE CONSENT AGENDA ITEMS

1. Approval of the Minutes for the September 29, 2021 Meeting
2. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Board Meetings Due to Health Risks Posed by In-Person Meetings

REGULAR AGENDA

3. Chair Report (Discussion)
4. CEO Report (Discussion)

5. Update on California Community Power (CC Power) Long Duration Storage Project (Discussion)
6. Update on California Community Power (CC Power) Labor and Environmental Policy (Discussion)
7. Committee Members' Reports (Discussion)

ADJOURNMENT

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA's Website at: <https://www.peninsulacleanenergy.com>.

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 2 below) rather than your computer audio

Options for Joining

- A. Videoconference with Computer Audio – see Option 1 below
- B. Videoconference with Phone Call Audio– see Option 2 below
- C. Calling in via Telephone/Landline – see Option 3 below

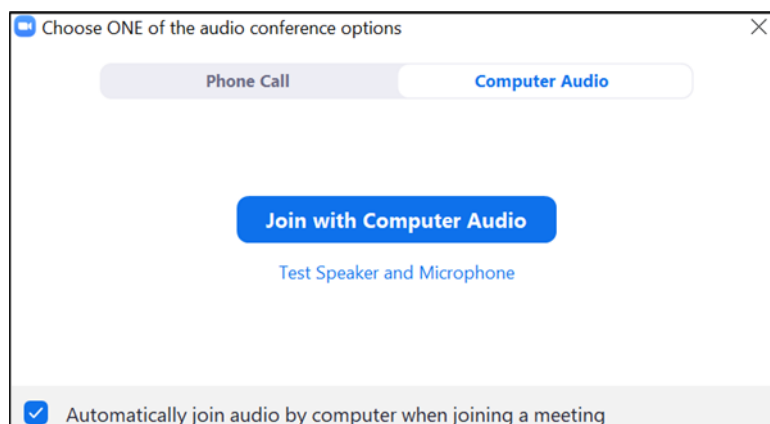
Videoconference Options:

Prior to the meeting, we recommend that you install the Zoom Meetings application on your computer by clicking here <https://zoom.us/download>.

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the Zoom application.

Option 1 Videoconference with Computer Audio:

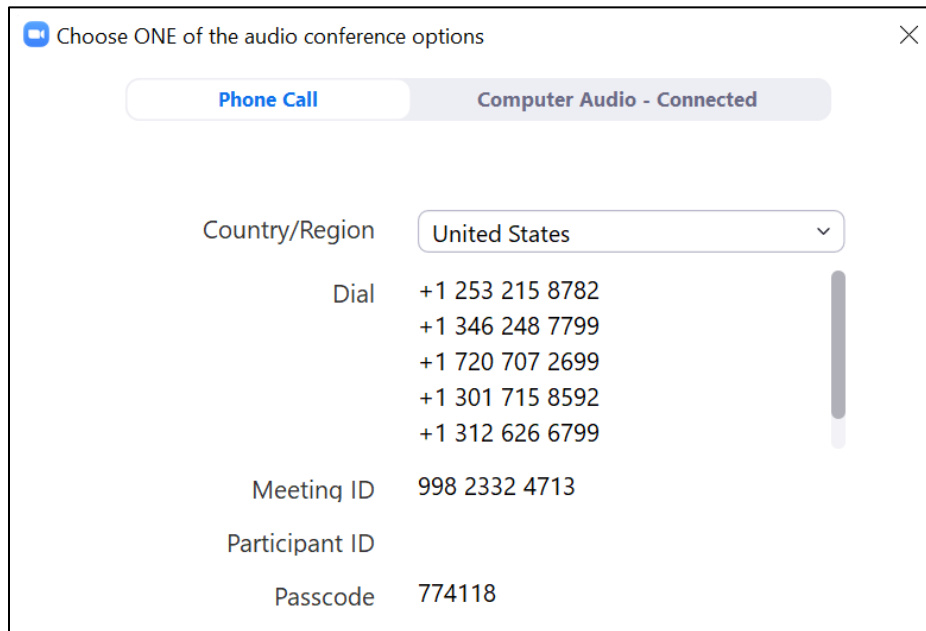
1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation : <https://pencleanenergy.zoom.us/j/83834724993>
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.



4. Click the blue, "Join with Computer Audio" button.
5. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Option 2 Videoconference with Phone Call Audio:

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: <https://pencleanenergy.zoom.us/j/83834724993>
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Phone Call option at the top of the pop-up screen.



4. Please dial +1 (669) 900-9128
5. You will be instructed to enter the meeting ID: **838-3472-4993 followed by #.**
6. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account.
7. After a few seconds, your phone audio should be connected to the Zoom application on your computer.
8. In order to enable video, click on "Start Video" in the bottom left hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Audio Only Options:

Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.

Option 3: Calling in via Telephone/Landline:

1. Dial +1 669 900 9128.
2. You will be instructed to enter the meeting ID: **838-3472-4993 followed by #.**
3. You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line.
4. You will be instructed to enter the meeting passcode **2075 followed by #.**

Special Meeting of the Executive Committee of the Peninsula Clean Energy Authority (PCEA) Minutes

Wednesday, September 29, 2021
11:30 a.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 11:32 a.m. in virtual teleconference.

ROLL CALL

Participating Remotely:

Rick DeGolia, Atherton, *Chair*
Donna Colson, Burlingame, *Vice Chair*
Marty Medina, San Bruno
Rick Bonilla, San Mateo
Jeff Aalfs, Portola Valley
John Keener, Director Emeritus

Absent:

Dave Pine, San Mateo County
Julia Mates, Belmont
Giselle Hale, Redwood City
Laura Parmer-Lohan, San Carlos
Pradeep Gupta, Director Emeritus

Staff:

Jennifer Stalzer Kraske, Deputy County Counsel
Nelly Wogberg, Board Clerk

A quorum was established.

PUBLIC COMMENT

None.

ACTION TO SET AGENDA

MOTION: Director Bonilla moved, seconded by Director Colson to set the Agenda.

MOTION PASSED: 5-0 (Absent: San Mateo County, Belmont, Redwood City, San Carlos)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
Atherton	Director DeGolia	X			

Belmont	Director Mates				X
Burlingame	Director Colson	X			
Redwood City	Director Hale				X
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan				X
San Mateo	Director Bonilla	X			
Portola Valley	Director Aalfs	X			
	Totals	5			4

REGULAR AGENDA

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings (Action)

Jennifer Stalzer-Kraske, Deputy County Counsel, reported on AB 361.

MOTION: Director Bonilla Moved, Seconded by Director Aalfs to Adopt the Resolution Finding That, as a Result of the Continuing Covid-19 Pandemic State of Emergency Declared by Governor Newsom, Meeting in Person for Meetings of the Peninsula Clean Energy Executive Committee Would Present Imminent Risks to the Health or Safety of Attendees.

MOTION PASSED: 5-0 (Absent: San Mateo County, Belmont, Redwood City, San Carlos)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine				X
Atherton	Director DeGolia	X			
Belmont	Director Mates				X
Burlingame	Director Colson	X			
Redwood City	Director Hale				X
San Bruno	Director Medina	X			
San Carlos	Director Parmer-Lohan				X
San Mateo	Director Bonilla	X			
Portola Valley	Director Aalfs	X			
	Totals	5			4

ADJOURNMENT

Meeting was adjourned at 11:36 a.m.

**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: October 6, 2021
COMMITTEE MEETING DATE: October 12, 2021
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority

SUBJECT: Resolution to Make Findings Allowing Continued Remote Meetings Under Brown Act

RECOMMENDATION:

Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. If these waivers fully sunset on October 1, 2021, legislative bodies subject to the Brown Act would have to contend with a sudden return to full compliance with in-person meeting requirements as they existed prior to March 2020, including the requirement for full physical public access to all teleconference locations from which committee members were participating.

On September 16, 2021, the Governor signed AB 361, a bill that formalizes and modifies the teleconference procedures implemented by California public agencies in response to the Governor's Executive Orders addressing Brown Act compliance during shelter-in-place periods. AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders when certain circumstances occur or when certain findings have been made and adopted by the local agency.

AB 361 also requires that, if the state of emergency remains active for more than 30 days, the agency must make findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public

health emergency and the social distancing recommendations of local public health officials. **Effectively, this means that agencies, including PCEA, must agendaize a Brown Act meeting once every thirty days to make findings regarding the circumstances of the emergency and to vote to continue relying upon the law's provision for teleconference procedures in lieu of in-person meetings.**

AB 361 provides that Brown Act legislative bodies must return to in-person meetings on October 1, 2021, unless they choose to continue with fully teleconferenced meetings because a specific declaration of a state or local health emergency is appropriately made. AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 is effective immediately as urgency legislation and will sunset on January 1, 2024.

On September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel brings this memo and corresponding resolution to the attention of the Executive Committee.

On September 29, 2021, the Peninsula Clean Energy Executive Committee approved a thirty (30) day extension of remote meetings in accordance with AB 361.

DISCUSSION:

Because local rates of transmission of COVID-19 are still in the "substantial" tier as measured by the Centers for Disease Control, it is recommended that the Peninsula Clean Energy Executive Committee avail itself of the provisions of AB 361 allowing continuation of online meetings by adopting findings to the effect that conducting in-person meetings would present an imminent risk to the health and safety of attendees. A resolution to that effect, and directing staff to return each 30 days with the opportunity to renew such findings, is attached hereto.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

* * * * *

RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19 PANDEMIC STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM, MEETING IN PERSON FOR MEETINGS OF THE PENINSULA CLEAN ENERGY EXECUTIVE COMMITTEE WOULD PRESENT IMMINENT RISKS TO THE HEALTH OR SAFETY OF ATTENDEES

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the “Brown Act”), provided certain requirements were met and followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

WHEREAS, California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>); and,

WHEREAS, the CDC has established a “Community Transmission” metric with 4 tiers designed to reflect a community’s COVID-19 case rate and percent positivity; and,

WHEREAS, the County of San Mateo currently has a Community Transmission metric of “substantial” which is the second most serious of the tiers; and,

WHEREAS, the Committee has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings;

WHEREAS, on September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with

AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel bring this resolution to the attention of the Executive Committee, and;

WHEREAS, on September 29, 2021, the Peninsula Clean Energy Executive Committee approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Committee deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

1. The recitals set forth above are true and correct.
2. The Committee finds that meeting in person would present imminent risks to the health or safety of attendees.
3. Staff is directed to return no later than thirty (30) days after the adoption of this resolution with an item for the Committee to consider making the findings required by AB 361 in order to continue meeting under its provisions.
4. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

* * * * *

**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: October 6, 2021
BOARD MEETING DATE: October 12, 2021
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Siobhan Doherty, Director of Power Resources

SUBJECT: Update on California Community Power (CCPower) Long Duration Storage Project (Discussion)

RECOMMENDATION:

Review update on CC Power long duration storage request for offers.

BACKGROUND:

CC Power will hold a special meeting on Friday October 8, 2021 to discuss issuing a notice of intent to consider approving a contract with a long duration storage project that was identified through the request for offers issued in 2020.

DISCUSSION:

Staff will provide an update to the Executive Committee on the RFO process and the CC Power special meeting.

STRATEGIC PLAN:

(Outline how this supports the Objectives and Key Tactics of Peninsula Clean Energy's Strategic Plan)

This supports the following objectives in the strategic plan:

B. Clean Power: Design a diverse power portfolio that is 100% carbon free by 2021; and 100% carbon free by 2025 on a 24 x 7 basis

D. New Power Resources: Continually explore and support innovative sources and solutions for clean energy



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: October 5, 2021
BOARD MEETING DATE: October 12, 2021
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Executive Committee
FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
SUBJECT: Update on California Community Power (CCPower) Labor and Environmental Policy (Discussion)

RECOMMENDATION

Review proposed labor and environmental policy under consideration by the CC Power board of directors.

BACKGROUND

California Community Power (CC Power) is a joint powers agency composed of ten CCAs that allows member CCAs to combine their buying power to procure new, cost-effective clean energy and reliability resources to continue advancing local and state climate goals. Peninsula Clean Energy is one of the founding members of CC Power.

The first project that CC Power is pursuing is a long-duration energy storage project. At the CC Power board meeting held on April 14, 2021, a set of “Enhanced Conditions” was adopted for this project regarding workforce, environmental, and environmental justice. These conditions were adopted through discussions with the labor and environmental stakeholders and represent the goals of the CC Power members participating in this project (of which Peninsula Clean Energy is one). These conditions are attached to this memo as “Exhibit 1”.

The CC Power board formed an ad hoc committee to work on a set of principles/guidelines/policies for future CC Power projects regarding labor and environmental conditions. I serve on this ad hoc committee, along with CC Power board members from EBCE, RCEA, SCP, and CPSF. The ad hoc committee has met numerous times, and based on input from labor and environmental stakeholders, the committee recommended a “Competitive Rates, Labor and Environmental Policy” to the CC Power board at the September 15, 2021 CC Power board meeting. This is attached as “Exhibit 2”.

A 7-page letter of public comments prepared by labor stakeholders was sent to CC Power board members on September 14, 2021 regarding the proposed policy that was under consideration for the September 15, 2021 CC Power board meeting. These comments are attached as Exhibit 3. At the September 15, 2021 CC Power board meeting, consideration of this policy was continued as requested in these public comments. It was also determined that it would be difficult to incorporate any changes into the policy based on those comments “real-time” at the September 15 meeting. The main areas that labor has asked for changes are 1) scope of projects affected by the policy; 2) clarification of prevailing wage requirement; 3) construction directly contracted by CC Power; 4) local bidding preferences; 5) unbundled renewable energy credits; and 6) public advisory committee.

Since then, the ad hoc committee has met to consider the public comments and incorporate staff’s proposed revisions to the policy which will be taken up at the October 20, 2021 board meeting. The public comments from labor suggest that they would prefer the labor portion of the LDS policy (Exhibit 1) be adopted rather than the September 15 proposed policy (Exhibit 2). A redline that shows the changes of the September 15 policy compared to the LDS policy is attached as Exhibit 4.

DISCUSSION

At the October 20, 2021 CC Power board meeting, a revised policy will be presented to the board for adoption. Further background on the issues under discussion will be shared with the Executive Committee.

Attachment A to Resolution 21-04-14

CC Power LDS Project

Enhanced Conditions

The focus of the CC Power Long Duration Storage (LDS) Project is to ensure the development of viable, cost-effective LDS project(s) that enhance grid reliability and carbon reduction through helping to manage VER curtailment while providing value to participating CCAs. This will require selecting projects that are located in areas that meet the CAISO criteria for interconnection, do not have grid-charging constraints while also financially viable. In meeting this focus, CC Power will also consider workforce and environmental concerns for the LDS Project through enhancing the conditions imposed on project developers as follows:

1. Workforce
 - a. Any construction work contracted by parties in furtherance of this agreement, whether or not it is a public work as defined by Labor Code section 1720, shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6 as they may be amended from time to time.
 - b. State a preference, but not a requirement, for a Project Labor Agreement (PLA) allowing up to 5 points in the evaluation ranking process
 - i. Note that adopting a PLA demonstrates meeting the requirements of payment of prevailing wages and use of apprenticeship programs
 - c. For projects that do not implement a PLA, require an audit to ensure compliance with payment of prevailing wages and to evaluate use of apprenticeship programs
 - d. Encourage the use of local labor
2. Environmental
 - a. All projects must meet the permitting requirements of the appropriate governing authority/authorities
 - b. State a preference for projects that avoid sensitive habitat areas
3. Environmental Justice
 - a. Require the developer to attest to not using forced labor in its supply chain which can be demonstrated by signing on to the SEIA pledge
 - b. Require developers to identify project benefits to local communities

Attachment A to Resolution 21-09-09

Competitive Rates, Labor and Environmental Policy

Policy: CC Power is authorized to acquire and operate wholesale power resources, engage joint consulting and contracting services, and offer other services to the benefit of its Members consistent with its authorities under its Joint Powers Agreement. A goal of CC Power and its Members is to supply low carbon power at competitive rates and pricing. Complimentary goals of CC Power and its Members establish and strengthen the employee and employer relationship; assess and mitigate environmental performance; and foster fair treatment of all people.

To the extent that CC Power enters into contracts for utility-scale projects that provide power supply on behalf of CC Power Members, CC Power will seek to award those contracts consistent with the following principles:

1. Competitive, low carbon power supply
 - a. CC Power Members supply low carbon power supply and services to customers at competitive rates.
 - b. CC Power shall further the low carbon power supply and competitive rates of its Members.
2. Workforce
 - a. For projects located in California, contracting partners shall comply with California prevailing wage provisions applicable to public works projects.
 - b. Irrespective of project location, state a preference, but not a requirement, for a Project Labor Agreement (PLA) which will be incorporated into the bidder evaluation ranking process
 - i. Adopting a PLA demonstrates meeting the requirements of payment of prevailing wages and use of apprenticeship programs
 - ii. For projects that do not implement a PLA, an audit will be required to ensure compliance with payment of prevailing wages and to evaluate use of apprenticeship programs
 - c. Encourage the use of local labor
3. Environmental
 - a. All projects must meet the permitting requirements of the appropriate governing authority/authorities
 - b. State a preference for projects that avoid sensitive habitat areas
 - c. Developers of construction projects shall state a preference for suppliers that promote waste diversion.
4. Environmental Justice
 - a. Developers of construction projects shall state opposition to using forced labor in the supply chain.
 - b. Developers of construction projects are to identify project benefits to local communities

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*Not admitted in California.
Licensed in Colorado.

September 14, 2021

Via Email Only

Board Members
California Community Power
70 Garden Court, Suite 300
Monterey, CA 93940
Email: comments@cacommunitypower.org

Re: Letter on Behalf of IBEW Locals 6, 413, 595 and 617; September 15, 2021 Agenda Item 6(B): Resolution 21-09-09 Approval of Competitive Rates, Labor, Environmental, and Environmental Justice Policy

Dear Chair and Board Members:

I am writing on behalf of International Brotherhood of Electrical Workers Union Locals 6 (San Francisco), 413 (Santa Barbara), 595 (Alameda) and 617 (San Mateo) (collectively "IBEW") to request continuance of Agenda Item 6(B), Consideration of Approval of Resolution 21-09-09 Competitive Rates, Labor, Environmental, and Environmental Justice Policy ("the Proposed Policy"). IBEW supports the adoption of formal California Community Power ("CC Power") policies to ensure that CC Power will seek to award contracts and negotiate contract terms that support the creation of local jobs, support local business, support union labor and apprenticeship programs that create employment opportunities, support maintaining area construction wage standards, support inclusive business practices, and ensure consideration of environmental and equity impacts when entering into agreements that will result in the siting of new power plants and energy storage facilities.

While Locals 6, 413, 595 and 617 are pleased that the Proposed Policy addresses a number of these issues, several key provisions in the Proposed Policy

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September 14, 2021

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are vague in scope and intent as written. For policies to be effective, they must be clear both to bidders and to future staff and board members who may not have the institutional memory of the intended interpretation of the policies.

In particular, the Proposed Policy requires clarification that its scope includes both construction projects built by third parties resulting from procurement agreements as well as any construction projects built through direct contracts with CC Power and its members. The Proposed Policy also requires clarification that its scope includes both power purchase agreements and energy storage agreements.

The prevailing wage provisions of the Proposed Policy are also vague. The prevailing wage policies previously adopted by CC Power for the Long Duration Storage project specifically stated that the policy applied even where a project would not be considered a “public work” project under the California Labor Code (e.g., a project built pursuant to a power purchase agreement). The Proposed Policy does not contain this clarification and creates a risk that bidders or future staff may misinterpret its intent. The Long Duration Storage policy also expressly listed the relevant Labor Code sections include Sections 1777.5 and 1777.6 which require public works contractors to request dispatch of apprentices from a state-approved program. The Proposed Policy deletes the references to these sections and thus could be interpreted to exclude the public works apprenticeship requirements – which are key to ensuring ratepayer expenditures support workforce development.

The Proposed Policy also rejects stakeholder recommendations to include: (1) a PLA requirement consistent with what is authorized under Labor Code Section 2500 for projects where CC Power directly contracts for construction (in contrast with a PLA bidding preference where third parties construct a project pursuant to a purchase agreement or energy storage service agreement); (2) a bidding preference for projects located within the geographic boundaries of the CC Power members so that ratepayer funds are spent with a preference to create local jobs; (3) a public advisory committee; and (4) a prohibition on development of projects that rely on unbundled renewable energy credits – which are difficult to verify and can be used to avoid constructing new renewable power projects.

IBEW Locals 6, 413, 595 and 617 respectfully request that approval of this policy be continued until the next Board Meeting to allow time for additional clarifying language to be developed and to allow additional time for stakeholders

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and the boards of member CCAs to provide input on the four disputed recommendations. A continuance would have no impact on any pending CC Power projects since its Long Duration Storage project is being negotiated pursuant to the project-specific labor and environmental policies adopted by the Board earlier this year with the support of IBEW and other stakeholders. The Proposed Policy would apply only to future projects.

I. Background on Policy Development

CC Power is a Joint Powers Agency comprised of ten CCAs and controlled by a Board made up of CCA staff. CC Power will negotiate region-wide procurement and power/energy storage agreements on behalf of member CCAs. Due to concerns that a statewide JPA controlled by administrative staff with no direct public official oversight reduces public-accountability and transparency, a coalition of labor and environmental groups requested that CC Power adopt meaningful labor and environmental policies to govern the negotiation of project contracts. CC Power has been responsive to this request and formed a policy subcommittee to evaluate proposed policies.

As an interim step to adopting general labor and environmental policies, CC Power adopted a project-specific labor and environmental policy to govern its current Long Duration Storage project RFP process. Among other requirements, this policy requires the Long Duration Storage project to comply with specified California prevailing wage provisions even if the construction project would not meet the definition of a public work under Labor Code section 1720. This policy recognized that, because third party construction projects built pursuant to a power purchase or energy storage service agreement would not generally fall under the statutory definition of a public work, CC Power would have to independently adopt a prevailing wage requirement to cover those types of projects. The Long Duration Storage project prevailing wage requirement expressly incorporated applicable Labor Code requirements including Labor Code section 1777.5 which requires contractors subject to prevailing wage compliance to request dispatch of apprentices from state-approved apprenticeship programs. This apprenticeship dispatch requirement ensures that projects developed through public or ratepayer funds support workforce development.

Because the Long Duration Storage policy is project-specific, it contains a more limited policy than needed to address a general policy covering a variety of different types of projects.

II. Concerns with Proposed Policy

A. Scope of Policy Is Ambiguous.

The Proposed Policy states that it applies where “CC Power enters into contracts for utility-scale projects that provide power supply on behalf of CC Power Members.” This scope is unduly vague as written. The term “projects that provide power supply” does not clearly encompass energy storage projects. In addition, the term “contracts for utility-scale projects that provide power supply” should be amended to more clearly state that it applies to both procurement and direct construction agreements.

IBEW recommends adopting a more encompassing scope that states: “This policy applies to the solicitation, development, negotiation and award of contracts by CC Power to meet the integrated resource plan needs of the CC Power members.”

B. Clarification of Prevailing Wage Requirement

The Proposed Policy states that “For projects located in California, contracting partners shall comply with California prevailing wage provisions applicable to public works projects.”

This language differs significantly from the policy language adopted for the Long Duration Storage project. That policy stated: “Any construction work contracted by parties in furtherance of this agreement, whether or not it is a public work as defined by Labor Code section 1720, shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6 as they may be amended from time to time.”

There are two substantive differences between the Long Duration Storage project prevailing wage language and the Proposed Policy language. First, the Proposed Policy does not contain the language clarifying that it applies even where a project would not otherwise be considered a public work under state law. Because

the Proposed Policy does not contain this clarification, it creates a risk that bidders or future staff may misinterpret its intent.

Second, the Long Duration Storage policy expressly lists relevant Labor Code sections, including Sections 1777.5 and 1777.6 which require public works contractors to request dispatch of apprentices from a state-approved program. The Proposed Policy deletes the references to these sections and thus could be interpreted to exclude the public works apprenticeship requirements – which are key to ensuring ratepayer expenditures support workforce development.

IBEW has been informed that the subcommittee’s preference is to not cite specific labor code sections. While the preference would be to simply adopt the same language used in the Long Duration Storage project, an alternative that would eliminate the ambiguity in the Proposed Policy language would be the following:

“Whether or not a construction project is a public work as defined by the California Labor Code, contracting partners shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to the Labor Code sections pertaining to employment of apprentices on public works projects. Projects located outside of California shall comply with the public work requirements applicable to that jurisdiction.”

C. PLA Requirement for Construction Directly Contracted by CC Power

The Proposed Policy should be amended to require a project labor agreement on a project where CC Power directly contracts for construction. Public Contract Code section 2500 expressly allows adoption of a PLA requirement where a public agency is directly contracting for construction. This would be a separate and additional policy from the PLA bidding preference policy contained in the Proposed Policy where third parties construct a project pursuant to a purchase agreement or energy storage service agreement.

D. Bidding Preference for Local Projects that Create Local Jobs

The Proposed Policy should be amended to include a bidding preference for projects located within the geographic boundaries of the CC Power members so that

ratepayer funds are spent with a preference to create local jobs. The bidding preference should be tiered to (1) projects within geographic boundaries of the CC Power members; (2) projects in California; and (3) projects whose first point of connection is within California.

E. Prohibition on Unbundled Renewable Energy Credits

The Proposed Policy should be amended to prohibit projects involving the use of unbundled renewable energy credits (RECs) to meet member renewable energy goals. Unbundled RECs are difficult to verify and are often used to avoid constructing new renewable power projects.

F. Public Advisory Committee

IBEW urges CC Power to commit to the creation of a public advisory committee. Such a committee would ensure transparency and public engagement, which is particularly important for a staff-run agency without direct public official control.

G. Proposed Policy Should Be Mandatory Unless Deviation Is Approved by the Board

The Proposed Policy states that CC Power will “seek to award CC Power contracts consistent with the following principles. The word “seek” should be replaced with “only.” Policy compliance by staff should be mandatory unless deviation is expressly approved by the Board. Even with this change, the Policy only requires “consistency” and thus provides some flexibility in its implementation. The Policy may always be amended for a specific project, but such amendment should require affirmative Board action.

III. Conclusion

IBEW Locals 6, 413, 595 and 617 thank CC Power for its commitment to address the concerns of stakeholders related to how this new staff-run Joint Powers Agency will operate. For many of the proposals, we appear aligned in intent, but the specific language requires more specificity to reflect that intent. In addition, the Proposed Policy fails to address key stakeholder concerns such as local project preference and transparency through engagement with a public advisory

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committee. We request that this agenda item be continued until the next meeting in order to allow additional stakeholder engagement with the policy subcommittee and input from member CCA boards in order to get this policy done right the first time.

Sincerely,

A handwritten signature in blue ink that reads "Thomas A. Enslow". The signature is written in a cursive style with a long horizontal line extending to the right.

Thomas A. Enslow

TAE:acp

4994-008acp

Attachment A to Resolution 21-09-09

Competitive Rates, Labor and Environmental Policy

Policy: CC Power is authorized to acquire and operate wholesale power resources, engage joint consulting and contracting services, and offer other services to the benefit of its Members consistent with its authorities under its Joint Powers Agreement. A goal of CC Power and its Members is to supply low carbon power at competitive rates and pricing. Complimentary goals of CC Power and its Members establish and strengthen the employee and employer relationship; assess and mitigate environmental performance; and foster fair treatment of all people.

To the extent that CC Power enters into contracts for utility-scale projects that provide power supply on behalf of CC Power Members, CC Power will seek to award those contracts consistent with the following principles:

1. Competitive, low carbon power supply
 - a. CC Power Members supply low carbon power supply and services to customers at competitive rates.
 - b. CC Power shall further the low carbon power supply and competitive rates of its Members.
2. Workforce
 - a. For projects located in California, contracting partners shall comply with California prevailing wage provisions applicable to public works projects.
 - b. Irrespective of project location, state a preference, but not a requirement, for a Project Labor Agreement (PLA) which will be incorporated into the bidder evaluation ranking process
 - i. Adopting a PLA demonstrates meeting the requirements of payment of prevailing wages and use of apprenticeship programs
 - ii. For projects that do not implement a PLA, an audit will be required to ensure compliance with payment of prevailing wages and to evaluate use of apprenticeship programs
 - c. Encourage the use of local labor
3. Environmental
 - a. All projects must meet the permitting requirements of the appropriate governing authority/authorities
 - b. State a preference for projects that avoid sensitive habitat areas
 - c. Developers of construction projects shall state a preference for suppliers that promote waste diversion.
4. Environmental Justice
 - a. Developers of construction projects shall state opposition to using forced labor in the supply chain.
 - b. Developers of construction projects are to identify project benefits to local communities