



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)

## Staff Report

---

**File #:** WS 16-044, **Version:** 1

---

**DATE:** June 28, 2016

**TO:** Mayor and City Council

**FROM:** Director of Utilities and Environmental Services

### **SUBJECT**

East Bay Community Energy - Presentation of Draft Joint Powers Agreement and Technical Study

### **RECOMMENDATION**

That Council reviews and comments on this report.

### **SUMMARY**

The County of Alameda and the cities within the County are exploring the possibility of establishing a community choice aggregation (CCA) program also known as a community choice energy (CCE) program. At this meeting, County staff will present the draft Joint Powers Agreement (JPA) and an overview of the technical study. This item is for information and discussion only. In September or October this year, Council may be asked to consider an ordinance that would allow Hayward to become a member of the East Bay Community Energy Authority.

### **BACKGROUND**

In June 2014, the Alameda County Board of Supervisors allocated \$1.3 million to exploring the possibility of establishing a CCA program, which is being called East Bay Community Energy (EBCE). If established, EBCE would be a joint powers authority (JPA) that aggregates electricity demand within participating Alameda County jurisdictions in order to procure electricity for its customers. Pacific Gas & Electric Company would continue to provide customer billing, transmission, and distribution services.

On April 5, 2016, Council received an overview about CCA and an update on the County's efforts to establish a CCA program for all of Alameda County. The April 5 report, which includes more background on EBCE, and several other reports provided to Council and the Council Sustainability Committee are available at <http://www.hayward-ca.gov/cce> .

### **DISCUSSION**

At tonight's work session, Alameda County staff will provide an overview of EBCE, the draft JPA, an overview of the technical study, and the timeline leading to launch of the program. EBCE, like other existing CCA programs, would be governed by a Board of Directors and a JPA. The draft JPA (available at <http://www.hayward-ca.gov/cce>) is similar to those in place for other CCA programs in California, but has been modified to address comments made by attorneys representing potential member agencies and by members of the EBCE Steering Committee.

Draft Joint Powers Agreement - Following is a summary of major points, issues, and comments:

Recitals Goals of EBCE. East Bay Clean Power Alliance (EBCPA), a non-profit based in Oakland that advocates for energy efficiency and renewable energy, requested that the program goals that were endorsed by the EBCE Steering Committee be included in the JPA agreement and in the ordinance that cities will adopt to join the program. The goals have been included in item 6 of the Recitals.

Article 2 Formation of JPA. Compliance with the Brown Act is included in Section 2.8. Compliance with Conflict of Interest requirements is addressed in Sections 2.9.

Section 3.1 Addition of Parties. After initial formation of the JPA, additional cities and counties may join the JPA upon a majority vote of the Board and payment of the new Party's pro rata share of pre-existing expenditures.

Section 4.2.1 Board of Directors. The draft JPA states that Board members shall be "a member of the governing body of the Party", but allows a staff member or member of the public to be designated as an Alternate. Some cities have indicated they might wish to designate as an Alternate a community member who is a subject matter expert. Staff recommended to the County that Alternate Directors should be elected officials or staff (not a "member of the public") as elected officials and staff are better positioned to accurately represent the interests of the Party (i.e., the City).. Staff is seeking Council's direction on this issue.

The East Bay Clean Power Alliance requested that the JPA Board include five community representatives to serve as non-voting members. During the May Steering Committee meeting, Supervisor Haggerty suggested formation of a Community Advisory Committee in lieu of having community members on the Board. A CAC has been included in Section 4.8.1 of the JPA.

Section 4.6 Executive Committee. The Executive Committee would be authorized by the Board to address certain essential functions that will be described in Operating Rules and Regulations, which have yet to be drafted and adopted by the Board. The draft JPA was changed to say that "The Board shall establish an Executive Committee consisting of a smaller number of Directors." The previous version said "The Board may establish..."

Section 4.8.1 Community Advisory Committee. The Board will establish a nine-member committee that will advise the Board. Each member will serve a four-year term. The Council may want to include any required qualifications of CAC members such as being a rate payer, having a background in energy, or representing affected groups like seniors.

Section 4.11 Board Voting. Section 4.11.1 states that, for most votes, each Party will have one vote. This is defined as a “Percentage Vote.” Section 4.11.2 allows for a “Voting Shares Vote.” A Voting Shares vote cannot take place on a matter unless the matter first receives an affirmative or tie Percentage Vote and two or more Directors immediately thereafter request a Voting Shares Vote. A Voting Shares Vote is a weighted voting that takes into account the annual energy used within the Party’s jurisdiction.

For Hayward, weighted voting based on population would be very similar to the proposed approach (see Attachment I). Using electricity load provides a good representation of customers and size of customers.

Section 4.13 Chair & Vice Chair Term Limits. The draft JPA states that the term of office “shall continue for one year, but there shall be no limit on the number of terms.” The Vice Chair shall serve in the absence of the Chair. Some cities have noted that the Board can name a new chair every year if there are sufficient votes and that the technical nature of the CCA may warrant the stability offered by a chair serving successive terms. Staff requested that the Chair and Vice Chair be limited to two terms, but the request has not been incorporated into the draft JPA. It should be noted that while having no limit on one-year terms may lead to stability on the Board, it can also lead to entrenchment and stagnation. Council may wish to consider advocating for some appropriate term limits.

Section 4.15 Operational Audit. At least once every two years, EBCE will hire an independent firm to evaluate the performance of the CCA Program relative to goals for renewable energy and carbon reduction.

Section 6.3.2 Funding of Initial Costs. The County will fund the costs associated with establishing EBCE. The County will be reimbursed through rates charged to customers. The County has budgeted approximately \$3 million to evaluate feasibility and then establish the program.

Article 7 Withdrawal of Party. A city may withdraw from EBCE, however as stated in Section 7.2, the city remains “responsible for any claims, demands, damages, or liabilities arising from the Party’s membership in the Authority...” The Authority may have long-term energy contracts in place to serve the Party’s load and a withdrawing Party may need to cover the costs of its pro rata share of such contracts. This could make it prohibitively expensive for a Party to withdraw from the Authority.

Section 7.3 Withdrawal Prior to Program Launch. Parties will be asked to adopt an ordinance to join the JPA. The deadline to join is currently tentatively set as October 31, 2016. After the JPA is formed and cities join, the Authority will receive bids from potential power suppliers. The Authority will then provide a report “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.” The current draft of the JPA states that “Within 15 days after receiving this report, any Party may immediately withdraw its membership in the Authority by providing written notice of withdrawal to the Authority” if certain conditions exist. The County has indicated that the [short time frame is intended to address a technical concern with entering into power supply](#)

agreements. Power supply quotes may only be valid for a short period of time and that to keep the power supply offers open for a longer period, the CCA would encounter additional expense. Furthermore, the County indicated the report summarizing bids from power suppliers would be simple and would not require extensive staff analysis.

Staff asked the County to change the 15-day period to 45 days to allow time for staff to review the report, prepare a recommendation, and present to Council. A 15-day decision period will not allow for this process.

Section 8.1 Dispute Resolution. This section of the JPA requires mediation prior to pursuing other remedies. The previous version of the JPA also allowed for “arbitration”, but this was removed per Hayward’s request. Arbitration can be very time-consuming and expensive and does not offer much benefit compared to a regular trial. Staff supports the mediation approach.

Section 8.3 Indemnification of Parties. This section of the JPA states “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.”

Section 8.4 Amendment of the JPA. The JPA may be amended upon a two-thirds vote of the Board, except that any amendments to Section 4.11 (Board Voting) will require a three-quarters affirmative vote.

In summary, staff recommends a letter to Alameda County addressing Section 4.2.1 (Board membership), Section 4.13 (Chair & Vice Chair Term Limits), Section 4.81 (Community Advisory Committee), and Section 7.3 (time to withdraw prior to launch), and including any additional issues that Council may identify during this work session.

Technical Study - The County commissioned a Technical Study to determine the feasibility of establishing a CCA in Alameda County. The report (available at <http://www.hayward-ca.gov/cce>) addresses the electric load the program would need to serve, the carbon intensity of electricity that could be provided in comparison with that of PG&E, and the rates that would be charged in comparison to PG&E rates. The Study includes the following chapters:

Executive Summary

- 1 Introduction
- 2 Economic Study Methodology and Key Inputs
- 3 Cost and Benefit Analysis
- 4 Sensitivity of Results to Key Inputs
- 5 Macroeconomic Impacts
- 6 Other Risks
- 7 Other Issues Investigated
- 8 Conclusions

The Renewable Portfolio Standard (RPS), per State law, requires that electricity providers source at least

33% renewable energy by 2020 and at least 50% by 2030. The EBCE Study considered three scenarios with varying levels of renewable energy:

1. Minimum RPS Compliance: EBCE would meet the minimum 33% RPS requirement in 2020 and the 50% RPS requirement in 2030.
2. Accelerated RPS: EBCE would provide 50% renewable energy starting in the first year. The other 50% would be from large hydroelectric power to further reduce GHG emissions. However, large hydroelectric generation is not considered “renewable” for purposes of meeting the RPS.
3. Ultra-Low GHG: EBCE would provide 50% renewable energy in the first year and 80% by the fifth year.

Chapter 3 provides rate comparisons between PG&E and EBCE only for residential customers. No rates or rate comparisons are provided for commercial or industrial customers. Following is a brief summary:

	<b>Scenario 1</b> Minimum RPS Compliance	<b>Scenario 2</b> More Aggressive	<b>Scenario 3</b> Ultra-Low GHG
Renewable Content	33% in 2020 & 50% in 2030	50% from 1 <sup>st</sup> year	50% from 1 <sup>st</sup> year & 80% by 5 <sup>th</sup> year
GHG compared to PG&E	Higher in every year	Higher for 1 <sup>st</sup> few years	Lower in every year
Anticipated Residential Rate Savings	7%	6.5%	3%

As shown in Figure 16 in the Technical Study, Scenario 1 provides no advantage over PG&E in terms of GHG emissions. As shown in Figure 18 in the Technical Study, even Scenario 2 has higher or almost equivalent GHG emissions compared to PG&E in 2017 through 2024. This leaves Scenario 3 as the one option that provides for significant, near term GHG savings.

Chapter 4 includes a rate sensitivity analysis that shows how rates could be impacted by various factors, which is shown graphically on page twenty-nine. The base case assumes that the Diablo Canyon nuclear power plant will not continue to operate beyond 2025. On June 21, 2016, PG&E confirmed that Diablo Canyon will close by 2025. If Diablo Canyon did relicense, the sensitivity analysis shows that PG&E’s generation costs would increase and EBCE would be at a competitive advantage. The worst case scenario in the sensitivity analysis combines all the negative conditions, including the closing of Diablo Canyon, and shows the EBCE would have higher rates than PG&E starting in 2024.

The Technical Study concludes that “a CCA in Alameda County appears favorable” in that rates would likely be competitive with PG&E. The report also concludes that providing electricity with fewer GHG emissions than PG&E may be somewhat challenging. Because PG&E sources much of its electricity from large hydroelectric and nuclear generators, the CCA will need to provide large percentages of renewable and/or hydroelectric in order to outperform PG&E in terms of emissions.

The County established a deadline of June 15 for comments on the technical study. Staff submitted comments asking the County to include rate comparisons for commercial and industrial customers.

*Comments from Others* - The following entities have submitting written comments (available at <http://www.hayward-ca.gov/cce>) on the Technical Study:

The City of San Leandro has requested changes to the voting Shares Vote. Also, San Leandro has hired a consultant to do a peer review of the Technical Study.

EBCPA:

- Not enough local renewable generation is expected
- Most of job creation identified in the economic model is due to customers' bill savings
- The ability to forecast market conditions out to 2030 is questionable

IBEW 1245:

- Future PG&E rates and cost of solar power cannot be substantiated
- Future electric load is not accurate
- The study provides no assurance that EBCE can balance supply and demand
- There is no limitation on use of RECs (and there should be)
- The study does not anticipate sufficient local renewable generation
- A high PCIA should not be a "sensitivity." It should be expected
- The inputs to the economic and jobs analysis are incorrect.

## **ECONOMIC IMPACT**

As described in Chapter 5 of the Technical Study, construction of local generation facilities within Alameda County would have very little impact on the County's overall economic activity. The economic model shows that a much larger impact on the local economy would be caused by the bill savings experienced by individual customers. The report notes that when a household has a lower utility bill, there may be increased spending in other sectors of the local economy. Depending on the scenario selected, projected job creation could range from 731 to 1,322 new jobs. According to the California Economic Development Department, as of April 2016, there were 790,800 jobs in Alameda County. The job creation from EBCE could amount to a 0.09% to 0.17% increase, depending on the scenario implemented.

## **FISCAL IMPACT**

Staff anticipates the fiscal impact to Hayward, as a result of joining EBCE, will be in the form of additional staff time. Staff will assess City staffing necessary to effectively coordinate with EBCE and will report back to Council. Preliminary analysis, indicates that costs would be primarily in additional staffing (1-3 FTE) and in consulting and legal costs to assure that Hayward is consistently positioned within the EBCE, that rate payers in Hayward continue to benefit from membership, and that adequate and expected progress on Hayward's Climate Action Plan is being made.

As noted above, the County will front all costs associated with forming EBCE. In addition, the JPA states that "the Authority shall defend, indemnify and hold harmless the Parties..." If, after EBCE is established, Hayward decides to withdraw from the program, there would be significant fiscal impacts.

## SUSTAINABILITY FEATURES

The EBCE program is directly in line with General Plan policy NR 4.8, which states, “The City shall assess and, if appropriate, pursue participation in community choice aggregation, or other similar programs. The City shall seek partnerships with other jurisdictions to minimize start up and administration costs.”

In addition, the program, if successful, may have the following sustainability features or benefits:

Energy: Electricity/natural gas/other fossil fuels.

A primary goal of the EBCE program would be to provide electricity from clean and renewable sources that reduces our reliance on fossil fuels. However, it remains to be clearly determined how much impact the EBCE would have over PG&E.

Air: Air emissions of pollutants.

EBCE would minimize pollutants and has the potential to reduce GHG emissions, helping Hayward to meet its Climate Action goals. However, it remains to be clearly determined how much impact the EBCE would have over PG&E.

Purchasing: Consistent with the City’s Environmentally Preferred Purchasing Policy.

EBCE would meet the environmental and economic priorities of its member agencies.

## PUBLIC CONTACT

As noted above, there have been many public meetings of the County Steering Committee, the City Council Sustainability Committee and the City Council on this topic. The County is planning to launch a robust public education and outreach campaign prior to launch of the program.

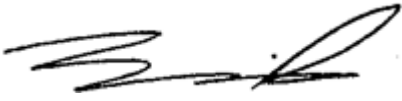
## NEXT STEPS

Staff will record comments and recommendations of the Council and submit them to the County prior to the July 1 deadline. The County Board of Supervisors is scheduled to approve the JPA on July 19, 2016. The tentative deadline to join the JPA is October 31, 2016. Staff will return to Council in September/October for Council’s consideration to join the JPA; and will present a draft Ordinance for adoption should Council decide to move forward. The County’s goal is to launch EBCE in the spring of 2017.

*Prepared by:* Erik Pearson, Environmental Services Manager

*Recommended by:* Alex Ameri, Director of Utilities and Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I

Alameda County Population & Electrical Load



## Alameda County Population &amp; Electrical Load

City	Population	% of County	Load (MWh)	% of County
Oakland	422,856	27.3%	2,005,388	24.8%
Fremont	229,324	14.8%	1,306,713	16.2%
Hayward	158,985	10.3%	813,048	10.1%
Unincorporated	149,821	9.7%	513,917	6.4%
Berkeley	119,915	7.7%	684,455	8.5%
Livermore	88,138	5.7%	498,218	6.2%
San Leandro	87,700	5.7%	516,830	6.4%
Pleasanton	74,982	4.8%	529,114	6.6%
Union City	72,952	4.7%	356,019	4.4%
Dublin	57,349	3.7%	297,219	3.7%
Newark	44,733	2.9%	258,720	3.2%
Albany	18,893	1.2%	57,726	0.7%
Emeryville	11,721	0.8%	203,591	2.5%
Piedmont	11,219	0.7%	32,768	0.4%
<b>Total</b>	<b>1,548,588</b>		<b>8,073,726</b>	

## Notes:

1. Data does not include City of Alameda.
2. Population: Source for population is Department of Finance Table 2: E-5 City/County Population and Housing Estimates, 1/1/2016.
3. Load: Source for electrical load is MRW's Technical Study for Community Choice Aggregation Program in Alameda County, Appendix A. Load data is from 2014 and represents 85% of each city's load. It is assumed that 15% of customers will opt out of EBCE and remain with PG&E.

