



## Agenda Page 1 of 2

### Executive Committee Meeting Friday, October 5, 2018 12:00 P.M.

**Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901**  
**Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 7.6.18 Meeting Minutes
  - C.2 Monthly Budget Update
  - C.3 Withdrawal of MCE Policy No. 005
6. Resolution No. 2018-08 Authorizing Delegation of Authority by CEO (Discussion/Action)
7. Establishing an Alternative Claims Procedure (Discussion/Action)
  - a. Proposing First Reading of Ordinance No. 2018-02 Establishing an Alternative Claims Procedure pursuant to Government Code Section 935
8. MCE Joint Powers Agreement and Land Use (Discussion)
9. Employee Retention and Streamlining Human Resources Functions (Discussion/Action)





MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA  
OAKLEY | PINOLE | PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

## Agenda Page 2 of 2

10. FY 2017/18 Budgetary Comparison Schedules (Discussion)
11. Review Draft 10.18.18 Board Agenda (Discussion)
12. Committee Member & Staff Matters (Discussion)
13. Adjourn



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**DRAFT**  
**MCE**  
**EXECUTIVE COMMITTEE MEETING**  
**Friday, July 6, 2018**  
**12:00 P.M.**

**The Charles F. McGlashan Room**, 1125 Tamalpais Avenue, San Rafael, CA 94901  
**The Mt. Diablo Room**, 2300 Clayton Road, Suite 1150, Concord, CA 94520  
**Marten Law PLCC**, Four Embarcadero Center, Suite 1400, San Francisco, CA 94111

**Roll Call**

**Present:**

Denise Athas, City of Novato (*San Rafael*)  
Edi Birsan, Concord (*Concord*)  
Tom Butt, City of Richmond (*San Rafael*)  
Barbara Coler, Town of Fairfax (*San Rafael*)  
Ford Greene, Town of San Anselmo (*San Rafael*)  
Kevin Haroff, City of Larkspur (*San Rafael*)  
Bob McCaskill, City of Belvedere (*San Rafael*)  
Kate Sears, County of Marin (*San Rafael*)  
Robert Storer, Alt., Town of Danville (*Concord*)

**Absent:**

Sloan Bailey, Town of Corte Madera  
Federal Glover, Contra Costa County  
Dave Trotter, Town of Moraga

**Staff:**

Jesica Brooks, Board Assistant (*San Rafael*)  
John Dalessi, Planning and Implementation (*Dial-In*)  
Sarah Estes-Smith, Director of Internal Operations (*San Rafael*)  
Katie Gaier, Manager of Human Resources (*San Rafael*)  
Darlene Jackson, Board Clerk/Executive Assistant to CEO (*Concord*)  
Vicken Kasarjian, Chief Operating Officer (*San Rafael*)  
Sam Kang, Resource Planning (*Dial-in*)  
Beth Kelly, General Counsel (*San Rafael*)  
Joey Lande, Customer Programs Manager (*San Rafael*)  
David McNeil, Manager of Finance (*San Rafael*)  
Enyo Senyo-Mensah, Internal Operations Assistant (*Concord*)  
CC Song, Senior Policy Analyst Legal and Policy (*San Rafael*)  
Greg Stepanicich, Special Counsel (*San Rafael*)  
Dawn Weisz, CEO (*Concord*)

Quorum was established and the regular Executive Committee meeting was called to order by Chair Tom Butt.

**Agenda Item #04 – Report from Chief Executive Officer (Discussion)**

CEO Dawn Weisz shared with the Committee information regarding the following:

- It is likely that there will be no August Board meeting.
- Detailed Regulatory update will be presented at the 7.19.18 Board meeting to include proceedings for:
  - August oral arguments
  - Resource Adequacy
  - Integrated Resource Plan
  - Legislative Bills
- Huge thank you to Chair Sears in representing MCE and speaking at the CPUC Customer Choice En Banc.

**Agenda Item #05 – Consent Calendar (Discussion/Action)**

- C.1 Approval of 5.4.18 Meeting Minutes
- C.2 1<sup>st</sup> Agreement with Cohen Ventures, Inc.
- C.3 Monthly Budget Update
- C.4 CalCCA Membership Dues

Chair Butt asked for public comment and there were comments from member of the public Rebecca Collins.

Action: It was M/S/C (Athas/Sears) to **approve Consent Calendar Items C.1 and C.2**. It was M/S/C (Coler/Greene) to **approve Consent Calendar item C.4**. Item C.3 was removed from the Consent Calendar to be presented at the next Executive Committee meeting. Motion carried by unanimous roll call vote. (Absent: Directors Bailey, Glover, and Trotter)

**Agenda #06 – CPUC Integrated Resource Plan Standard Load Serving Entity Template Submission (Discussion/Action)**

CC Song, Senior Policy Analyst, presented this item and addressed questions from the Committee.

Chair Butt asked for public comment and there was none.

Action: It was M/S/C (Greene/Sears) to **approve CPUC Integrated Resource Plan Standard Load Serving Entity Template**. Motion carried by unanimous roll call vote. (Absent: Directors Bailey, Glover, Haroff and Trotter)

**Agenda #07 – Adjustment to Scope of Work for Technical Committee (Discussion/Action)**

Action: This item was deferred to the July Board meeting.

**Agenda #08 – Land Use and Powers under the Joint Powers Authority (Discussion)**

Action: This item was deferred to the September Board Retreat.

**Agenda #09 – New MCE Staff Position (Discussion/Action)**

Action: This item was deferred to the August Executive Committee meeting.

**Agenda #10 – Discuss Topics for Board Retreat in September (Discussion)**

Action: This item was deferred to the August Executive Committee meeting.

**The meeting was adjourned at 2:10 P.M. to the next scheduled Executive Committee Meeting on August 3, 2018.**

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**Tom Butt, Executive Committee Chair**

**ATTEST:**

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**Dawn Weisz, Chief Executive Officer**



MAHER ACCOUNTANCY 1101 FIFTH AVENUE • SUITE 200 • SAN RAFAEL, CA 94901

Financial Plumblines

**ACCOUNTANTS' COMPILATION REPORT**

Board of Directors  
Marin Clean Energy

Management is responsible for the accompanying special purpose statement of Marin Clean Energy (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended July 31, 2018, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of Marin Clean Energy.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

The supplementary information contained on page 4 is presented for purposes of additional analysis. The supplementary information has been compiled from information that is the representation of management. We have not audited or reviewed the supplementary information and, accordingly, do not express an opinion or provide any assurance on such supplementary information.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA

September 10, 2018

**MARIN CLEAN ENERGY**  
**OPERATING FUND**  
**BUDGETARY COMPARISON SCHEDULE**  
April 1, 2018 through July 31, 2018

	Actual - from April 1 through		YTD Budget		YTD Budget Variance (Under) Over	YTD Budget Variance (Under)Over %	Annual Budget	Budget Remaining
	July 31		YTD Budget	Over				
	2017/18	2018/19	2018/19	2018/19				
<b>ENERGY REVENUE</b>								
Retail (net of allowance)	\$ 71,175,460	\$ 121,977,800	\$ 131,111,481	\$ (9,133,681)	(7.0%)	\$ 384,583,000	\$ 262,605,200	
Wholesale	-	994,330	-	994,330		-	(994,330)	
Other	-	197,253	3,333	193,920		10,000	(187,253)	
<b>TOTAL ENERGY REVENUE</b>	<b>71,175,460</b>	<b>123,169,383</b>	<b>131,114,814</b>	<b>(7,945,431)</b>	<b>(6.1%)</b>	<b>384,593,000</b>	<b>261,423,617</b>	
<b>ENERGY EXPENSES</b>								
Cost of energy	61,809,649	95,950,596	95,302,425	648,171	0.7%	303,259,000	207,308,404	
<b>NET ENERGY REVENUE</b>	<b>9,365,811</b>	<b>27,218,787</b>	<b>35,812,389</b>	<b>(8,593,602)</b>	<b>(24.0%)</b>	<b>81,334,000</b>		
<b>OPERATING EXPENSES</b>								
Personnel	1,693,438	2,267,806	2,409,990	(142,184)	(5.9%)	8,891,000	6,623,194	
Data manager	1,201,019	2,080,477	2,333,488	(253,011)	(10.8%)	7,005,000	4,924,523	
Technical and scheduling services	262,884	307,130	320,000	(12,870)	(4.0%)	1,346,000	1,038,870	
Service fees- PG&E	458,031	616,401	619,719	(3,318)	(0.5%)	1,413,000	796,599	
Legal and regulatory services	166,254	160,398	148,976	11,422	7.7%	834,000	673,602	
Communications and related services	178,376	460,416	627,000	(166,584)	(26.6%)	1,881,000	1,420,584	
Other services	167,399	326,376	315,372	11,004	3.5%	1,653,000	1,326,624	
General and administration	201,953	399,524	370,505	29,019	7.8%	1,309,000	909,476	
Occupancy	154,927	187,637	291,000	(103,363)	(35.5%)	873,000	685,363	
Local pilot programs	9,125	1,500	2,000	(500)	(25.0%)	1,500,000	1,498,500	
Low income solar programs	13,600	30,600	29,500	1,100	3.7%	190,000	159,400	
<b>TOTAL OPERATING EXPENSES</b>	<b>4,507,006</b>	<b>6,838,265</b>	<b>7,467,549</b>	<b>(629,284)</b>	<b>(8.4%)</b>	<b>26,895,000</b>	<b>20,056,735</b>	
<b>OPERATING INCOME (LOSS)</b>	<b>4,858,805</b>	<b>20,380,522</b>	<b>28,344,840</b>	<b>(7,964,318)</b>	<b>(28.1%)</b>	<b>54,439,000</b>		
<b>NONOPERATING REVENUES</b>								
Grant and other income	102,501	353,981	496,836	(142,855)	(28.8%)	980,000	626,019	
Interest income	76,396	211,561	214,711	(3,150)	(1.5%)	743,000	531,439	
<b>TOTAL NONOPERATING REVENUES</b>	<b>178,897</b>	<b>565,542</b>	<b>711,547</b>	<b>(146,005)</b>	<b>(20.5%)</b>	<b>1,723,000</b>	<b>1,157,458</b>	
<b>NONOPERATING EXPENSES</b>								
Banking fees and financing costs	-	9,167	9,166	1	0.0%	243,000	233,833	
Depreciation (supplemental)	36,006	57,467	60,000	(2,533)	(4.2%)	180,000	122,533	
<b>TOTAL NONOPERATING EXPENSES</b>	<b>36,006</b>	<b>66,634</b>	<b>69,166</b>	<b>(2,532)</b>	<b>(3.7%)</b>	<b>423,000</b>	<b>356,366</b>	
<b>TOTAL NONOPERATING INCOME (EXPENSES)</b>	<b>142,891</b>	<b>498,908</b>	<b>642,381</b>	<b>(143,473)</b>	<b>(22.3%)</b>	<b>1,300,000</b>		
<b>CHANGE IN NET POSITION</b>	<b>5,001,696</b>	<b>20,879,430</b>	<b>28,987,221</b>	<b>(8,107,791)</b>	<b>(28.0%)</b>	<b>55,739,000</b>		
<b>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>								
Capital outlay	123,568	321,363	325,000	(3,637)	(1.1%)	947,000	625,637	
Depreciation (supplemental)	(36,006)	(57,467)	(60,000)	2,533	(4.2%)	(180,000)	(122,533)	
Transfer to Local Renewable Development Fund	186,000	428,000	428,000	-	0.0%	428,000	-	
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>	<b>273,562</b>	<b>691,896</b>	<b>693,000</b>	<b>(1,104)</b>	<b>(0.2%)</b>	<b>1,195,000</b>	<b>503,104</b>	
Net increase (decrease) in available fund balance	\$ 4,728,134	\$ 20,187,534	\$ 28,294,221	\$ (8,106,687)		\$ 54,544,000		

**MARIN CLEAN ENERGY  
ENERGY EFFICIENCY PROGRAM FUND**

**BUDGETARY COMPARISON SCHEDULE  
April 1, 2018 through July 31, 2018**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
<b>REVENUE AND OTHER SOURCES:</b>				
Public purpose energy efficiency program	\$ 2,383,000	\$ 471,840	\$ 1,911,160	19.80%
Public purpose Low Income Families and Tenants pilot program	1,750,000	102,565	1,647,435	5.86%
<b>TOTAL REVENUE AND OTHER SOURCES:</b>	<u>4,133,000</u>	<u>574,405</u>	<u>3,558,595</u>	
<b>EXPENDITURES AND OTHER USES:</b>				
Public purpose energy efficiency program	2,383,000	471,840	1,911,160	19.80%
Public purpose Low Income Families and Tenants pilot program	1,750,000	102,565	1,647,435	5.86%
<b>TOTAL EXPENDITURES AND OTHER USES:</b>	<u>4,133,000</u>	<u>574,405</u>	<u>3,558,595</u>	
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND  
BUDGETARY COMPARISON SCHEDULE  
April 1, 2018 through July 31, 2018**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
<b>REVENUE AND OTHER SOURCES:</b>				
Transfer from Operating Fund	\$ 428,000	\$ 428,000	\$ -	100.00%
<b>EXPENDITURES AND OTHER USES:</b>				
Capital Outlay and related	200,000	-	200,000	0.00%
Net increase (decrease) in fund balance	<u>\$ 228,000</u>	428,000		
Fund balance at beginning of period		<u>124,033</u>		
Fund balance at end of period		<u>552,033</u>		



**MARIN CLEAN ENERGY**  
**BUDGETARY SUPPLEMENTAL SCHEDULE**  
**April 1, 2017 through July 31, 2018**

	<u>Actual</u>
<b>Other services</b>	
Audit	\$ 22,710
Accounting	58,000
IT Consulting	39,175
Human resources & payroll fees	5,686
Miscellaneous professional fees	200,805
	<u>          </u>
<b>Other services</b>	<u><u>\$ 326,376</u></u>
<b>General and administration</b>	
Data and telephone service	\$ 17,713
Meeting room rentals	7,167
Office equipment lease	2,225
Dues and subscriptions	215,967
Conferences and professional education	34,149
Travel	31,030
Business meals	4,295
Interest and late fees	10
Miscellaneous administration	14,984
Office supplies and postage	71,984
	<u>          </u>
<b>General and administration</b>	<u><u>\$ 399,524</u></u>



October 5, 2018

TO: MCE Executive Committee  
FROM: Elizabeth Kelly, General Counsel  
RE: Withdrawal of MCE Policy No. 005 (Agenda Item #05 - C.3)

**ATTACHMENTS:**

- A. MCE Policy No. 005 – Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets
- B. MCE Policy No. 015 – Energy Risk Management Policy

Dear Executive Committee Members:

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**SUMMARY:**

On April 19, 2018, your Board adopted MCE Policy No. 015 – Energy Risk Management Policy (“Policy No. 015”). Policy No. 015 incorporates all of the policies previously set forth in MCE Policy No. 005 – Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (“Policy No. 005”). MCE Staff recommends the withdrawal of Policy No. 005 in order to minimize redundancy.

**Fiscal Impact:** None.

**Recommendation:** Recommend that the Board withdraw MCE Policy No. 005.



## **POLICY NO. 005 – RISK MANAGEMENT PROCEDURES AND CONTROLS FOR TRANSACTIONS IN THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR MARKETS**

### **1. Introduction**

This policy sets forth the risk management policies related to MEA's transactions in the California Independent System Operator (CAISO) markets. The CAISO markets in which MEA participates and to which these policies apply include the following:

- Congestion Revenue Rights

### **2. Risk Exposure and Controls**

MEA uses Congestion Revenue Rights (CRRs) for the exclusive purpose of hedging congestion costs associated with serving its customer load. MEA participates in the CAISO CRR allocation process to obtain CRRs that protect against congestion costs that may arise between its contractual energy supply points and its default load aggregation point. CRR positions are limited to the volume of MEA's anticipated energy schedules for the respective path and time period associated with the CRR. All CRR transactions are executed and managed by MEA's scheduling coordinator, Shell Energy North America, and confirmation of such transactions are provided to MEA personnel who are independent from the CRR trading function

#### **a. Credit Risk**

Credit risk refers to the potential for non-payment or default by the counterparty to a transaction. MEA's CRRs are financially settled with the CAISO through MEA's scheduling coordinator. CRR credit risk is mitigated due to the credit policies and procedures in place at the CAISO and the credit provisions governing MEA's agreement with its scheduling coordinator.

#### **b. Liquidity Risk**

Liquidity risk refers to the potential inability of a party to close out a position at prevailing market prices due to a lack of buyers or sellers for the specific product being liquidated. CRRs can be sold in the CAISO monthly and annual CRR auction markets. CRRs can also be sold bilaterally through the CAISO administered secondary registration system.

#### **c. Market Risk**

Market risk refers to potential cost exposure resulting from changes in market prices for the underlying commodity. CRRs have positive value when congestion exists between the source and the sink associated with the CRR path such that locational marginal prices are lower at the source than at the sink. CRRs have negative value when the opposite is true. MEA uses CRRs exclusively to hedge against congestion costs, which are negatively correlated with CRR values, such that the potential adverse financial impacts of changes in CRR values and congestions costs are mitigated.

3. Training

MEA employees, contractors and agents transacting in CAISO markets shall meet all training requirement set forth in the CAISO Tariff or applicable CAISO Operating Agreement.

4. Monitoring and Reporting

a. Monitoring

CRR values shall be monitored at regular intervals, with such intervals selected in consideration of the risk characteristics of MEA's CRR holdings, but no less frequently than monthly. MEA personnel responsible for monitoring the value of MEA's CRR holdings shall be independent from those engaged in transacting in the CAISO's CRR markets.

b. Reporting

CRR values shall be reported on a monthly basis to the MEA Executive Officer and the Controller. Any material change in such CRR values or risks shall be identified and summarized in the aforementioned report.



**Policy 015: Energy Risk Management Policy**

**Energy Risk Management Policy  
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## **Energy Risk Management Policy**

### **1.0 General Provisions**

#### **1.1 Background and Purpose of Policy**

Marin Clean Energy's (MCE) mission is to address climate change by reducing energy-related greenhouse gas emissions through the use of renewable energy supply and energy efficiency programs at stable and competitive rates for customers while providing local economic and workforce benefits.

This Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations.

This Policy defines MCE's general energy risk management framework and provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling market and credit risks to which MCE is exposed in its normal course of business.

#### **1.2 Scope of Business and Related Market Risks**

MCE provides energy to retail customers in its service territory that entails business activities such as; bilateral purchases and sales of electricity under short, medium and long term contracts; scheduling of load and generation of electricity into California Independent Systems Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements as it relates to carbon free and renewable portfolio standard (RPS) compliant energy; participation in CAISO Congestion Revenue Rights ("CRRs") market; managing the balance of load and generation over short, medium and long term horizons; and compliance with California Public Utilities Commission (CPUC) Resource Adequacy (RA) requirements.

Examples of energy market risks include, but are not limited to, the following:

- Market Price Risk
- Counter party Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- Liquidity Risk
- Regulatory/Legislative Risk

This Policy focuses on the following:

- Risk Management Goals and Principles
- Definitions of Risks
- Internal Control Principles
- Risk Management Business Practices
- Risk Management Governance

This Policy does not address the following types of general business risk, which are treated separately in other official policies, ordinances and regulations of MCE: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to market risks as herein defined, and not those other categories of risk.

### **1.3 Policy Administration**

This version of the Energy Risk Management Policy adopted by the MCE Board of Directors the XXth day of XXX, 20XX, will be reviewed and updated as needed every two calendar years by the Technical Committee. This Policy may be amended as needed by MCE's Technical Committee.

### **1.4 Policy Distribution**

This Policy shall be distributed to all MCE employees and third-party contractors who are engaged in the planning, procurement, sale and scheduling of electricity on MCE's behalf and/or in other MCE departments providing oversight and support for these activities.

## **2.0 Risk Management Goals**

The goals of energy risk management shall be to:

- [1] assist in achieving the business objectives in the Integrated Resource Plan (IRP) and Reserve Policy including retail rate stability and competitiveness and the accumulation of financial reserves;
- [2] avoid losses and excessive costs which would materially impact the financial condition of MCE;
- [3] establish the parameters for energy procurement and sales activity to obtain the best possible price while ensuring compliance with Board-approved risk limits;
- [4] assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders; and
- [5] encourage the development and maintenance of a corporate culture at MCE in which the proper balance is struck between control and facilitation and in which professionalism, discipline, technical skills and analytical rigor come together to achieve MCE objectives.

## **3.0 Risk Management Principles**

MCE manages its energy resources and transactions for the purpose of providing its customers with low cost renewable, carbon free and other energy while at the same time minimizing risks. Undue exposure to CAISO or bilateral energy market volatility for the purpose of potentially achieving lower costs but at the risk that costs may, in fact, be much higher, will not be accepted. Procurement and hedging strategy will be determined by analytical methods supplemented by experienced judgement. MCE will use that experienced judgement and its analytical tools to assess system cost drivers such as weather, short term energy prices, load variation and operational constraints to manage timing and quantity of purchases and sales of energy and related services, consistent with the limits identified in this policy. When actions are taken that are consistent with this Policy and for the purpose of the combined goal of low costs and optimized risk, those actions are considered to be consistent with the



objectives of this policy. MCE will not engage in transactions, without proper authorization, whose purpose is not tied to managing costs and risks or are outside of the limits identified in this policy.

#### **4.0 Definitions of Market Risks**

The term “market risks,” as used here, refers specifically to those categories of risk which relate to MCE’s participation in wholesale and retail markets as Load Serving Entity (LSE) and its interests in long-term contracts. Market risks include market price risk, counterparty credit and performance risk, load and generation volumetric risk, operational risk, liquidity risk, and regulatory and legislative risk. These categories are defined and explained as follows.

##### **4.1 Market Price Risk**

Market Price risk is the risk that wholesale trading positions, long-term supply contracts and generation resources may move “out of the money,” that is, become less valuable in comparison with similar positions, contracts or resources obtainable at present prices. These same positions can also be “in the money” if they become more valuable in comparison to similar positions, contracts or resources obtainable at present market prices. This valuation methodology is commonly referred to as “Mark to Market.” If MCE is “out of the money” on a substantial portion of its contracts, it may have to charge higher retail rates. This may erode MCE’s competitive position and market share if other market participants (e.g., Direct Access providers or PG&E) are able to procure power at a lower cost and offer lower retail electricity rates.

A subcomponent of market price risk is market liquidity. Illiquid markets make it more difficult to buy or sell a commodity and can result in higher premiums on purchases or deeper discounts on sales.

Another dimension of market price risk is congestion risk. Congestion risks arise from the difference between the prices MCE pays the CAISO to schedule its load and the prices MCE receives from the CAISO for energy delivered by MCE’s suppliers.

##### **4.2 Counterparty Credit and Performance Risk**

Performance and credit risk refers to the inability or unwillingness of a counter party to perform according to its contractual obligations. Failure to perform may arise if an energy supplier fails to deliver energy as agreed. There are four general performance and credit risk scenarios:

- [1] counterparties and wholesale suppliers may fail to deliver energy or environmental attributes, requiring MCE to purchase replacement product elsewhere, possibly at a higher cost;
- [2] counterparties may fail to take delivery of energy or environmental attributes sold to them, necessitating a quick resale of the product elsewhere, possibly at a lower price;
- [3] counterparties may fail to pay for energy or environmental attributes delivered; and
- [4] counterparties and suppliers may refuse to extend credit to MCE, possibly resulting in higher collateral posting costs impacting MCE’s cash and bank lines of credit.

An important subcategory of credit risk is concentration risk. When a portfolio of positions and resources is concentrated in one or a very few counterparties, sources, or locations, it becomes more

likely that major losses will be sustained in the event of non-performance by a counterparty or supplier or as a result of price fluctuations at one location.

### **4.3 Load and Generation Volumetric Risk**

Energy deliveries must be planned for based upon forecasted load adjusted for distribution line losses. MCE forecasts load over the long and short term and enters into long and short term fixed price energy contracts to hedge its load consistent with the provisions of its IRP.

Load forecasting risks arises from inaccurate load forecasts and can result in the over or under procurement of energy and/or revenues that deviate from approved budgets. Energy delivery risk occurs if a generator fails to deliver expected or forecast energy. Variations in wind speed and cloud cover can also impact the amount of electricity generated by solar and wind resources, and occasional oversupply of power on the grid can lead to curtailment of energy deliveries or reduce revenue as a result of low or negative prices at energy delivery points. Weather is an important variable that can result in higher or lower electricity usage due to heating and cooling needs.

In the CAISO markets this situation can result in both over supply and undersupply of electricity relative to MCE's load and the over or under scheduling of generation or load into the day ahead market relative to actual energy consumed or delivered in the real time market. Load and generation volumetric risk may result in unanticipated open positions and imbalance energy costs. Imbalance energy costs result from differences in the price or volume of generation or load scheduled into the day ahead market when compared to the price or volume of generation or load occurring in the real time market during that time period.

### **4.4 Operational Risk**

Operational risk consists of the potential for failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

- [1] organizational structure that is ineffective in addressing risk, i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, ineffective internal checks and balances, incomplete, inaccurate and untimely forecasts or reporting, failure to separate incompatible functions, etc.;
- [2] absence, shortage or loss of key personnel or lack of cross functional training;
- [3] lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;
- [4] exposure to litigation or sanctions resulting from violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- [5] errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

#### **4.5 Liquidity Risk**

Liquidity Risk is the risk that MCE will be unable to meet its financial obligations. This can be caused by unexpected financial events and/or inaccurate pro forma calculations, rate analysis, and debt analysis. Some unexpected financial events impacting liquidity could include:

[1] breach of MCE credit covenants or thresholds; MCE has credit covenants included in its banking and several short-term energy contracts. Breach of credit covenants or thresholds could result in the withdrawal of MCE's line of credit or trigger the requirement to post collateral; and

[2] from time to time MCE may be the subject of legal or other claims arising from the normal course of business. Payment of a claim by MCE could reduce MCE's liquidity if the cause of loss is not covered by MCE's insurance policies.

#### **4.6 Regulatory/Legislative Risk**

Regulatory risk encompasses market structure and operational risks associated with shifting state and federal regulatory policies, rules, and regulations that could negatively impact MCE. An example is the potential increase of exit fees for customers served by Community Choice Aggregators such as MCE that would result in higher electricity rates for MCE's customers.

Legislative risk is associated with actions by federal and state legislative bodies, such as any adverse changes or requirements that may infringe on MCE's autonomy, increase its costs, or otherwise negatively impact MCE's ability to fulfill its mission.

#### **5.0 Internal Control Principles**

Internal controls shall be based on proven principles that meet or exceed the requirements of financial institutions and credit rating agencies and good utility practice. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations and information pertinent to management, and facilitate attainment of business objectives. These controls are currently and shall remain fully integrated into all activities of the business and shall be consistent with stated objectives. There shall be active participation by senior management in risk management processes.

The required controls include the following:

- [1] Segregation of duties and functions between front, middle, and back office activities. Generally:
- Front office is responsible for planning (e.g. preparation of the IRP and procurement planning) and procurement (e.g. solicitation management, contract negotiation, structuring and pricing, contract execution) and contract management and compliance;
  - Middle office is responsible for controls and reporting (e.g., risk monitoring, risk measurement, risk reporting, procurement compliance, counterparty credit review, approval and monitoring); and
  - Back office is responsible for settlements and processing (e.g., verification, validation, reconciliation and analysis of transactions, tracking, processing, and settlements of transactions).

[2] Delegation of authority that is commensurate with responsibility and capability, and relevant training to ensure adequate knowledge to operate in and comply with rules associated with the markets in which they transact (e.g., CAISO). Contract origination, commercial approval, legal review, invoice validation, and transaction auditing shall be performed by separate staff or contractor for any single transaction. No single staff member shall perform all these functions on any transaction.

[3] Defining authorized products and transactions. Generally:

- Authorized transactions are those transactions directly related to the procurement and/or administration of electric energy, reserve capacity, transmission and distribution service, ancillary services, congestion revenue rights (CRRs), renewable energy, renewable energy credits, scheduling activities, tolling agreements, and bilateral purchases of energy products. All transactions must be consistent with this Policy and the board approved IRP.
- Prohibited transactions are those transactions that are not related to serving retail electric load and/or reducing financial exposure. Speculative buying and selling of energy products is prohibited. Speculation is defined as buying energy in excess of forecasted load plus reasonable planning reserves or selling energy or environmental attributes that are not yet owned by MCE. In no event shall speculative transactions be permitted. Any financial derivatives transaction including, but not limited to futures, swaps, options, and swaptions are also prohibited.

[4] Defining procurement authority as set forth in MCE’s Board Resolution on Delegating Energy Procurement Authorities.

[5] Defining proper process for executing power supply contracts. Generally, MCE will ensure power supply contracts are approved by personnel from Procurement/Commercial, Technical, and Credit/Financial prior to execution. Legal review will be required of various forms of agreement. Forms of agreement will be reviewed no less than every six months.

[6] Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation.

[7] Meaningful summarization and accurate reporting of transactions and other activity at regular intervals.

[8] Timely and accurate risk and performance measurement at regular intervals.

[9] Regular compliance review to ensure that this Policy and related risk management guidelines are adhered to, with specific guidelines for resolving instances of noncompliance.

[10] Active participation by senior management in risk management processes.

## **6.0 Risk Management Business Practices**

### **6.1 Risk Measurement Metrics and Reporting**

A vital element of this Policy is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis

using risk measurement methodologies that quantify the risks associated with MCE’s procurement-related business activities and performance relative to goals.

MCE measures and updates its risks using a variety of tools that model programmatic financial projections, market exposure and risk metrics, as well as through short term budget updates. The following items are measured, monitored, and reported:

[1] Mark-to-Market Valuation – marking to market is the process of determining the current value of contracted supply. A mark-to-market valuation shall be performed at least on a quarterly basis.

[2] Exposure Reporting – calculates the notional dollar risk exposure of open portfolio positions at current market prices. The exposure risk calculation shall be performed at least on a quarterly basis.

[3] Open Position Monitoring – on a monthly basis, MCE shall calculate/monitor its open positions for all energy and capacity products. If energy open positions for the month following the then current month (prompt month) exceed 10% of load, MCE will solicit market prices to close open positions and make a commercial decision to close the position. Open positions for terms beyond the prompt month will be monitored monthly and addressed in accordance with MCE’s Load and Resource Balance Planning Model (Planning Model) and the IRP.

[4] Reserve Requirement Targets – on no less than an annual basis, MCE staff will monitor MCE’s reserves to ensure that they meet the targeted thresholds.

Consistent with the above, the Middle Office will develop reports and provide feedback to the Risk Oversight Committee.

Risk measurement methodologies shall be re-evaluated on a periodic basis to ensure MCE adjusts its methods to reflect the evolving competitive landscape.

## **6.2 Market Price Risk**

MCE manages market price risk using its Load and Resource Balance which defines forecasted load, energy under contract and MCE’s open positions in various energy product types including renewable energy (Product Content Category I, II and III), carbon free energy, system power, and MCE’s procurement targets.

MCE determines the quantity of energy it will contract for in each year using its Planning Model. The Planning Model includes an outline of the delivery term and quantity of energy by product type for which MCE will seek to contract in the upcoming year. The Planning Model informs MCE’s solicitation planning including solicitation timing and strategy, and person or team responsible for the solicitation.

In general MCE will seek to purchase roughly equal portions of long term renewable energy in each year in order to diversify exposure to market conditions and reduce the risk of concentrating purchases in any one year.

For products generally purchased through short and medium-term contracts MCE follows a similar strategy of diversifying contracting over the delivery horizon.

As predominantly a net buyer, MCE manages its market liquidity risk through purchasing at different intervals as described in the Planning Model and maintaining a diverse set of counterparties to transact with.

Congestion risk is managed through the contracting process with a preference for day ahead scheduling and energy delivery at the NP 15 trading hub and through resource assessment and selection. Once energy is procured MCE manages congestion risks through the prudent management of Congestion Revenue Rights (CRRs) consistent with its Congestions Revenue Rights Risk Management Guidelines. CRRs are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. MCE uses a third-party scheduling coordinator to manage its CRR portfolio. MCE uses CRRs to reduce its exposure to congestion and other CAISO charges, and will not use CRRs for speculative purposes.

### **6.3 Counter Party Credit and Performance Risk**

MCE evaluates and monitors the financial strength of service and energy providers consistent with MCE's Credit Guidelines. Generally, MCE manages its exposure to energy suppliers through a preference for counter parties with Investment Grade Credit ratings as determined by Moody's or Standard and Poor's and through the use of security requirements in the form of cash and letters of credit. MCE measures its mark-to-market counter party credit exposure consistent with industry best practices.

### **6.4 Load and Generation Volumetric Risk**

MCE manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery, acquiring energy from a geographically and technologically diverse portfolio of generating assets with a range of generation profiles. In order to ensure energy product targets are achieved, MCE uses 80 to 100 percent of the generator's average annual expected energy for certain variable or as available resources for operating year load and resource planning.

MCE manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators who together provide the systems and data necessary to forecast and schedule load using good utility practice.

MCE's load scheduling strategy, as executed by its scheduling coordinator, is captured in its Load Bidding/Scheduling Guidelines. The strategy ensures that price risk in the day ahead and real time CAISO markets is managed effectively and is consistent with good utility practice.

### **6.5 Operational Risk**

Operational risks are managed through:

- Adherence to this Policy and oversight of procurement activity;
- Conformity to Human Resources Policies and Guidelines;
- Staff resources, expertise and/or training reinforcing a culture of compliance;
- Ongoing and timely internal and external audits; and

- Cross-training amongst staff

## **6.6 Liquidity Risk**

MCE manages liquidity risk through adherence to its loan and power purchase agreement credit covenants, limiting commitments to provide security consistent with its Credit Guidelines, ensuring it has adequate loan facilities, prudent cash and investment management, and adherence to its Reserve Policy. MCE monitors its liquidity (defined as unrestricted cash, investments and unused bank lines of credit) no less than weekly. MCE utilizes scenario and sensitivity analyses while preparing budget, rate, and pro forma analyses in order to identify potential financial outcomes and ensure sufficient liquidity under adverse conditions.

## **6.7 Regulatory/Legislative Risk**

MCE manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions such as the California Community Choice Association. MCE regularly participates in regulatory rulemaking proceedings and legislative affairs to protect MCE's interests.

## **7.0 Risk Management Policy Governance**

### **7.1 MCE Board of Directors**

The MCE Board or its delegated subcommittee is responsible for adopting this Policy and reviewing it as needed every two calendar years. The Board also approves MCE's annual budget, contracting authorities and delegate responsibilities for the management of MCE's operations to its CEO and Staff.

### **7.2 Technical Committee**

The Technical Committee is responsible for approval of substantive changes to this Policy as needed every two calendar years, and for initiating and overseeing a review of the implementation of this Policy as it deems necessary. The Technical Committee is responsible for reviewing and approving the Integrated Resource Plan every year, and energy service and supply contracts consistent with MCE Board Resolutions describing contracting authorities.

### **7.3 Risk Oversight Committee (ROC)**

The ROC shall include the following voting members: Chief Executive Officer (CEO), Chief Operating Officer (COO), General Counsel, and Finance Manager, or their designees in case of their absence. The Director of Power Resources and Technical Procurement Advisor shall be non-voting members of the ROC. The CEO shall act as the chair of the ROC.

The ROC shall meet once per calendar quarter, or as otherwise called to order by the CEO. On at least a quarterly basis the Risk Oversight Committee shall provide a report to the Technical Committee regarding its meetings, deliberations, and any other areas of concern. The Finance Manager shall make reports and seek approval for any substantive changes to this Policy from the Technical Committee.

The ROC shall from time to time adopt and bring current risk management guidelines defining in detail the internal controls, strategies and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading and load and generation

scheduling. The ROC shall specify the categories of transactions permitted and set risk limits for wholesale trading. The ROC shall receive and review information and reports regarding risk management, wholesale trading transactions, the administration of supply contracts.

The ROC shall have direct responsibility for enforcing compliance with this Policy. Any gross violations to this Policy, as determined by the Chair of the ROC, shall be reported to the Technical Committee for appropriate action.





October 5, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Resolution 2018-08 Authorizing Delegation of Authority by CEO  
(Agenda Item #06)

ATTACHMENTS:

- A. Proposed Resolution No. 2018-08 Authorizing Delegation of Procurement, Purchasing and Contracting Authority by the Chief Executive Officer
- B. Resolution No. 2018-03 Rescinding Resolution No. 2017-02 and Delegating Energy Procurement Authority
- C. Resolution No. 2018-04 Designating the CEO as the Purchasing Agent Pursuant to Government Code 25500 and Delegating Purchasing Agent Authority

Dear Executive Committee Members:

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**SUMMARY:** In March 2018, your Board approved Resolution No. 2018-03 and Resolution No. 2018-04 delegating purchasing authority for Energy Procurement and contracts with a maximum of \$100,000. To ensure efficient purchasing and contracting across MCE your Board may delegate additional Purchasing Agents within the agency. The proposed Resolution No. 2018-08 would authorize the Chief Executive Officer to delegate procurement, purchasing and contracting authority to responsible Directors or Officers, including the Chief Operating Officer.

**FISCAL IMPACT:** None.

**RECOMMENDATION:** Recommend that the Board of Directors adopt proposed Resolution No. 2018-08.

**RESOLUTION NO. 2018-08**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY AUTHORIZING DELEGATION OF  
PROCUREMENT, PURCHASING AND CONTRACTING AUTHORITY  
BY THE CHIEF EXECUTIVE OFFICER**

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and The City of Concord, The Town of Danville, The City of Martinez, The Town of Moraga, The City of Oakley, The City of Pinole, The City of Pittsburg, The City of San Ramon and Unincorporated Contra Costa County; and

**WHEREAS**, from time to time, the Board of Directors and its Committees delegate rights and responsibilities to the Chief Executive Officer (CEO); and

**WHEREAS**, on March 15, 2018, the Board of Directors adopted Resolution No. 2018-03 providing for certain delegations to the CEO for Energy Procurement; and

**WHEREAS**, on March 15, 2018, the Board of Directors adopted Resolution No. 2018-05 designating the CEO as the Purchasing Agent for MCE with the authority to make purchases and enter into contracts with a maximum dollar amount of \$100,000 or less; and

**WHEREAS**, due to the large number of purchases and contracts made by MCE, it is appropriate and more efficient to have the CEO delegate certain purchases and contracts to Officers and Directors who are under the supervision and direction of the CEO.

**NOW, THEREFORE, BE IT RESOLVED**, by the MCE Board of Directors that the CEO may delegate by written memorandum the CEO's procurement, purchasing and contracting authority provided by the Board of Directors to any Officer, including the Chief Operating Officer, or any Director for such procurement, purchases and contracts falling within the programs or activities administered by such Director.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this XXX day of XXXXXXXX, 2018, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Unincorporated Contra Costa County				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
County of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

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CHAIR, MCE

**Attest:**

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SECRETARY, MCE

**MAR 15 2018**

**RESOLUTION NO. 2018-03**

**MARIN CLEAN ENERGY**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2017-02 AND  
DELEGATING ENERGY PROCUREMENT AUTHORITY**

**WHEREAS**, Resolution No. 2017-02 set forth contracting and procurement authority delegated by the Board of Directors; and

**WHEREAS**, the Board intends that this Resolution No. 2018-03, together with Resolution No. 2018-04, shall supersede and replace Resolution No. 2017-02; and

**WHEREAS**, the Board of Directors, by this delegation of energy procurement and contracting authority as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

**WHEREAS**, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

**NOW, THEREFORE, BE IT RESOLVED**, by the MCE Board of Directors:

- A. Resolution No. 2017-02 is hereby rescinded.
- B. For purposes of this Resolution, "Energy Procurement" shall mean all contracting, purchase and sale of energy and energy-related products for MCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage.
- C. The Board of Directors hereby delegates the following contracting authority consistent with an approved resource plan and/or budget, as applicable, including contracts that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

**1. Delegation to the Technical Committee**

The Technical Committee is hereby authorized to approve and direct the Chief Executive Officer ("CEO") and Technical Committee Chair to execute:

- a. contracts for Energy Procurement as herein defined;
- b. contracts for functions, programs or services related to Energy Procurement; and
- c. contracts related to MCE ownership, leasing or development of energy generation projects and assets.

**2. Delegation to the Chief Executive Officer and Technical Committee Chair, Jointly**

The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.

**3. Delegation to the Chief Executive Officer**

The CEO is hereby authorized to approve and execute:

- a. contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors; and
- b. amendments or addenda to existing Energy Procurement contracts, regardless of the existing contract's price or total amount, which improve the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors on this 15<sup>th</sup> day of March, 2018, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of American Canyon				✓
City of Belvedere	✓			
City of Benicia	✓			
City of Calistoga				✓
City of Concord	✓			
Contra Costa County				✓
Town of Corte Madera	✓			
The Town of Danville	✓			
City of El Cerrito	✓			
Town of Fairfax				✓
City of Lafayette	✓			
City of Larkspur				✓
County of Marin	✓			
The City of Martinez				✓
City of Mill Valley	✓			
Town of Moraga	✓			

City of Napa				✓
County of Napa				✓
City of Novato	✓			
City of Oakley	✓			
City of Pinole	✓			
City of Pittsburg				✓
City of Richmond	✓			
Town of Ross	✓			
Town of San Anselmo	✓			
City of San Pablo				✓
City of San Rafael	✓			
City of San Ramon	✓			
City of Sausalito	✓			
City of St. Helena				✓
Town of Tiburon				✓
City of Walnut Creek				✓
Town of Yountville				✓

*Jete Sears*

CHAIR, MCE

**Attest:**

*Don Waj*

SECRETARY, MCE

**RESOLUTION NO. 2018-04**

**MARIN CLEAN ENERGY**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE  
PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND  
DELEGATING PURCHASING AGENT AUTHORITY**

**WHEREAS**, Section 2.6 of the MCE Joint Powers Agreement provides that the power of MCE is subject to the same restrictions upon the manner of exercising power possessed by the County of Marin;

**WHEREAS**, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

**WHEREAS**, the Board of Directors desires to appoint a purchasing agent for MCE; and

**WHEREAS**, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

**WHEREAS**, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

**NOW, THEREFORE, BE IT RESOLVED**, by the MCE Board of Directors:

- A. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.
- B. This delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.
- C. The Board of Directors hereby delegates the following contracting authority, consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

**1. Delegation to the Executive Committee:**

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than \$100,000 shall also be executed by the Executive Committee Chair.



## **2. Delegation to the Purchasing Agent:**

The purchasing agent is hereby authorized to approve and enter into:

- a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of \$100,000 per vendor for a given scope of work, per fiscal year;
- b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and
- c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:
  - i. \$150,000 in the aggregate; or
  - ii. \$500,000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

## **3. Exemptions to Limits on Purchasing Agent's Purchasing Authority:**

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:


- a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;
- b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE's Estimated Aggregate Liability (EAL);
- c. Notices required by law;
- d. Fees and taxes required by law;
- e. Payments made pursuant to a duly approved contract;

- f. Routine office supplies;
- g. Insurance policies consistent with MCE's approved benefits policy;
- h. Print services; and
- i. Postage costs.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 15<sup>th</sup> day of March, 2018, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of American Canyon				✓
City of Belvedere	✓			
City of Benicia	✓			
City of Calistoga				✓
City of Concord	✓			
Contra Costa County				✓
Town of Corte Madera	✓			
The Town of Danville	✓			
City of El Cerrito	✓			
Town of Fairfax				✓
City of Lafayette	✓			
City of Larkspur				✓
County of Marin	✓			
The City of Martinez				✓
City of Mill Valley	✓			
Town of Moraga	✓			
City of Napa				✓
County of Napa				✓
City of Novato	✓			
City of Oakley	✓			
City of Pinole	✓			
City of Pittsburg				✓
City of Richmond	✓			
Town of Ross	✓			
Town of San Anselmo	✓			
City of San Pablo				✓

City of San Rafael	✓			
City of San Ramon	✓			
City of Sausalito	✓			
City of St. Helena				✓
Town of Tiburon				✓
City of Walnut Creek				✓
Town of Yountville				✓



CHAIR, MCE

**Attest:**



SECRETARY, MCE



October 5, 2018

TO: MCE Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: Establishing an Alternative Claims Procedure (Agenda Item #07)  
a) Proposing First Reading of Ordinance No. 2018-02 Establishing  
an Alternative Claims Procedure pursuant to Government Code  
Section 935

ATTACHMENT: Draft Ordinance No. 2018-02 Establishing an Alternative Claims  
Procedure pursuant to Government Code Section 935

Dear Executive Committee Members:

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**SUMMARY:**

Pursuant to California Government Code Section 935, a public entity may prescribe the process in which certain claims for money or damages may be made against the entity. In order to better protect MCE in the event of such a claim, MCE staff has developed a claims procedure pursuant to Government Code Section 935. To utilize this claims procedure, your Board must enact a Claims Procedure Ordinance as required by Government Code Section 935(a). Specifically, the Ordinance provides for the prerequisites to bringing a suit against the agency, the time of presentation, the form and the method by which the Board or Executive Committee reviews claims. No legal action may be maintained by a person who has not complied with the procedures set forth in this Ordinance.

**Fiscal Impact:** None.

**Recommendation:** Recommend that the Board of Directors waive full reading, read by title only, and introduce for first reading Ordinance No. 2018-02 of the Board of Directors of Marin Clean Energy Establishing an Alternative Claims Procedure pursuant to Government Code 935.

**ORDINANCE NO. 2018-02**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY  
ESTABLISHING AN ALTERNATIVE CLAIMS PROCEDURE PURSUANT TO  
GOVERNMENT CODE SECTION 935**

**WHEREAS**, the Government Claims Act (Government Code section 900 et seq.) (hereinafter “Act”) sets forth the general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against local public entities; and

**WHEREAS**, the Act excepts certain claims against local public entities from the presentation procedures of the Act; and

**WHEREAS**, the Act also specifies that local public entities may adopt a procedure for claims excepted under the Act and which are not governed by any other statutes or regulations; and

**WHEREAS**, the Board now desires to adopt a procedure to govern the presentation requirements of those excepted claims to establish an alternative claims procedure pursuant to Government Code section 935.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY  
DOES ORDAIN AS FOLLOWS:**

Section 1. Claims for money or damages.

All claims against Marin Clean Energy, for money or damages, which are excepted by section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 within Division 3.6 of Title 1 of the California Government Code and which are not otherwise governed by any other statute or regulation expressly related thereto, shall be governed by the procedure prescribed in this Ordinance, in accordance with Government Code section 935, as it may be amended.

Section 2. Claim prerequisite to suit.

All claims shall be presented as provided in this Ordinance and acted upon by Marin Clean Energy prior to the filing of any legal action on such claims. No such action may be maintained by a person who has not complied with the procedures set forth in this Ordinance.

Section 3. Time of presentation.

The claim must be presented to the Secretary of the Board within the time requirements set forth in Government Code section 911.2. For purposes of determining whether a claim is timely presented, a claim is presented to the Secretary when it is received at the mailing address for the Board.

Section 4. Form.

All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claims may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by Government Code section 910.

Section 5. Review of claims.

All claims shall be reviewed and audited by the Secretary for the Board for compliance with this Ordinance and submitted to the Board or the Executive Committee for approval or rejection. The Board or the Executive Committee shall act on a claim in the manner provided in Government Code sections 912.4, within 45 days after the claim has been presented. If a claim is amended, the Board or Executive Committee shall act on the amended claim within 45 days after the amended claim is presented.

Section 6. Notice and effect.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

PASSED, APPROVED, and ADOPTED by the Board of Directors of Marin Clean Energy, Marin County, State of California, this \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Unincorporated Contra Costa County				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				

City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
County of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
CHAIR, MCE

**Attest:**

\_\_\_\_\_  
SECRETARY, MCE



October 5, 2018

TO: Executive Committee

FROM: Elizabeth Kelly, General Counsel

RE: MCE Joint Powers Agreement and Land Use (Agenda Item #08)

Dear Executive Committee Members:

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In December 2017, Director Trotter delivered an email from Moraga Town Councilmember Korpus regarding the power of eminent domain of MCE. Specifically, Town Councilmember Korpus raised concern that the Joint Powers Agreement of MCE (hereafter, the “JPA”) grants MCE the power of eminent domain.

Upon receipt of Town Councilmember Korpus’s concern from Director Trotter, Staff analyzed the question and placed the matter on the agendas of the Executive Committee Meetings held on February 2, 2018 and March 2, 2018 for discussion. The matter was agendized for the July 6, 2018 meeting of the Executive Committee but was carried over to a future meeting.

The power of eminent domain is one of many powers common to local government agencies and its inclusion in the JPA is simply due to MCE’s structure as a local government agency, not because any interest has ever been expressed by MCE in exercising this power. In addition, protection of local land use rights has been built into the JPA to codify the preeminence of local land use decisions over any actions of the MCE Board. Specifically, unlike various other JPAs, MCE is required to comply with all local zoning and building laws of a member community. MCE JPA Section 2.7 states:

Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

With these restrictions in mind, and in light of extensive constitutional, legal, procedural, and timing protections in place regarding eminent domain as further described below, there does not appear to be any change needed to the authorities of MCE pursuant to its JPA.



### Background and Legal Analysis

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California. Government Code Section 6500, et seq. Where a member community individually has the power to exercise the power of eminent domain, so may its Joint Powers Authority, as is the case under MCE's JPA.

In relevant part, MCE's JPA provides:

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

[...] 2.5.4 acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;

Unlike various other JPAs, MCE is also required to comply with all local zoning and building laws of a member community. MCE JPA Section 2.7 states:

Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

Furthermore, although MCE has the power of eminent domain, California law and practice provides various protections to private citizens' property regarding eminent domain. These protections include but are not limited to:

- **Constitutional Protections:**

The Fifth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, and California Constitution, article I, section 19 require the protection of private citizens' property.

- **Legal Limitations:**

A joint powers authority may only exercise the power of eminent domain when expressly authorized by law. Specifically, "statutory language defining eminent domain powers is strictly construed and any reasonable doubt concerning the existence of the power is resolved against the entity." (Kenneth Mebane Ranches v. Superior Court (1992) 10 Cal.App.4th 276, 282-283.)

In order to exercise the power of eminent domain, pursuant to Code of Civil Procedure ("CCP") Section 1245.230, the governing body of the public entity must make the following findings to adopt a resolution of necessity:

- i. the public interest and necessity require the project;
- ii. the project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- iii. the property described in the resolution is necessary for the project; and

iv. the public entity made the offer required by Government Code Section 7267.2 to the record owner.

• **Procedural Limitations Held by the MCE Board or its Committees:**

Procedural limitations controlled by the MCE Board or its Committees include:

- Authorization of environmental review by MCE, including CEQA and NEPA;
- Authorization of appraisal and just compensation authorizations regarding the property (Government Code Section 7267.2);
- Hearings on the notice of eminent domain proceedings (CCP Section 1245.235);
- Hearings on the Resolution of Necessity authorizing the acquisition of the property by eminent domain (CCP Section 1245.235); and
- Adoption of the Resolution of Necessity by 2/3 vote of the Board of Directors (CCP Section 1245.360).

• **Duration of the Eminent Domain Process:**

The duration of contested eminent domain processes can run from 18 months to 3 years. This timeline consists of:

Obtaining an order for possession of the property. This will take 6 to 8 months from the time an offer to purchase the property is made to the property owner. An offer to purchase must be based on an appraisal prepared for the public agency. The time for preparing the appraisal needs to be added to the 6- to 8-month estimate. The timing of the appraisal will depend on the complexity of the acquisition and the availability of the appraiser. This could be a 30- to 60-day process. Once an order for possession is obtained from the court, possession can be taken 10 to 30 days after the notice of the court order depending upon whether the property is occupied.

Trial estimate. Assuming that the property owner does not challenge the right of the agency to condemn the property, a trial on valuation will occur 1 to 2 years after the complaint is filed in court. The complaint will be filed concurrently with the motion for an order for possession so there will be an approximately 6- to 8-month period before the complaint is filed. Therefore, from the start of the process (offer of purchase) until the end of trial can be an 18-month to 3-year process.

In light of the extensive constitutional, legal, procedural, and timing protections in place regarding eminent domain, the control of land use planning decisions by each member community and the extensive period of time for comment, review and collaboration with any member community, no changes are necessary to the authorities of MCE pursuant to its Joint Powers Agreement.

**Fiscal Impact:** None.

**Recommendation:** Discuss and provide direction to staff regarding any next steps.



October 5, 2018

TO: MCE Executive Committee

FROM: Vicken Kasarjian, Chief Operating Officer

RE: Employee Retention and Streamlining Human Resources Functions (Agenda Item #09)

ATTACHMENT: Proposed Resolution 2018-09 Delegating Authority of Setting Compensation, Tenure, Appointment and Conditions of Employment to the Executive Committee and the Chief Executive Officer

Dear Executive Committee Members:

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**SUMMARY:**

As discussed at the annual Board Retreat on September 28, 2018, MCE has identified opportunities to attract and retain employees, streamline human resources functions, and minimize Board member time spent on Human Resources-related detail.

MCE values opportunities to attract and retain the best talent. Employee engagement and satisfaction are critical to organizational success, and a competitive total compensation package contributes to high retention rates. To assess the market competitiveness of MCE's employee benefits offerings, in August 2018 staff initiated a comprehensive benefits plan survey, collecting information from all MCE member communities and relevant entities including all California-based CCAs, municipal utilities, and Investor-Owned Utilities (IOUs). The California Independent System Operator (CAISO), State of California, and federal utilities were also surveyed. Based on the survey and internal discussions, MCE proposes an expansion of benefits offerings to include:

- Vacation leave accrual limit of 280 hours
- Option to cash-out 80 hours of vacation leave once per year
- Voluntary leave transfer/donation program
- 100% of Gold-level health insurance premium for applicable family size
- Pre-K child care subsidy of \$500 per month
- Student loan subsidy of \$300 per month for 2 years
- Severance pay at CEO discretion (0-3 months)

MCE is also aware of an opportunity to more effectively attract and retain employees through improved human resources practices. MCE's Board of Directors delegated authority to its Executive Committee regarding human resources matters. However, as MCE continues to adapt and grow within the CCA landscape, in an effort to further streamline and improve the efficiency of MCE's human resources activities, management has prepared Resolution 2018-09. This Resolution delegates authority to the CEO, in consultation with the Executive Committee, to set the number, compensation, tenure, appointment and conditions of employment of MCE employees (other than the CEO), consistent with the Board-approved budget. The Executive Committee would prescribe the compensation, tenure, appointment and conditions of employment of the CEO consistent with the Board-approved budget.

The adoption of the proposed Resolution will help ensure MCE's agility in hiring and retaining staff that enable the agency to continue to deliver on its mission.

**Fiscal Impacts:**

1. Expenses associated with the proposed adjustments to MCE's benefits offerings are included in the FY 2018/19 budget.
2. The approval of Resolution 2018-09 would have no fiscal impact.

**Recommendation:**

1. No action is needed regarding proposed adjustments to MCE's benefits offerings. Discussion only.
2. Recommend that the Board of Directors approve Resolution 2018-09.

<sup>1</sup> Total Compensation study: A thorough assessment of the pay and benefits appropriate to a given job class based upon the market and comparator agencies.

**RESOLUTION NO. 2018-09**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY DELEGATING AUTHORITY OF SETTING  
COMPENSATION, TENURE, APPOINTMENT AND CONDITIONS OF EMPLOYMENT  
TO THE EXECUTIVE COMMITTEE AND THE CHIEF EXECUTIVE OFFICER**

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and The City of Concord, The Town of Danville, The City of Martinez, The Town of Moraga, The City of Oakley, The City of Pinole, The City of Pittsburg, The City of San Ramon and Unincorporated Contra Costa County; and

**WHEREAS**, consistent with Government Code Section 23500, the Board has the authority to prescribe the compensation of all MCE officers and provide for the number, compensation, tenure, appointment and conditions of employment of MCE employees;

**WHEREAS**, the Board of Directors seeks to improve and streamline employment matters of MCE through its delegation of authority.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Directors of MCE does hereby resolve, determine, and order as follows:

Section 1. The Board hereby delegates to MCE's Chief Executive Officer (CEO) or her or his designee, in consultation with the Executive Committee, the authority to prescribe the compensation of all MCE officers, other than the CEO, and provide for the number, compensation, tenure, appointment and conditions of employment of MCE employees, provided that such prescription and provision be consistent with the Board-approved budget.

Section 2. The Board hereby delegates to the Executive Committee the authority to prescribe the compensation of MCE's CEO and provide for the compensation, tenure, appointment and conditions of employment of the CEO, provided that such prescription and provision be consistent with the Board-approved budget.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 18th day of October, 2018, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Unincorporated Contra Costa County				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
County of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

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CHAIR, MCE

**Attest:**

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SECRETARY, MCE