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Contract Execution - Potential Procedural Defect(s)

From Alicia Minyen <aliciaminyen@comcast.net>

Date Mon 1/5/2026 2:13 AM

To liz.alessio@countyofnapa.org <liz.alessio@countyofnapa.org>; sandre@cityoflarkspur.org <sandre@cityoflarkspur.org>; ebeckman@cortemadera.org <ebeckman@cortemadera.org>; mbelotz@danville.ca.gov <mbelotz@danville.ca.gov>; kbirdseye@ci.benicia.ca.us <kbirdseye@ci.benicia.ca.us>; bcoler@townoffairfaxca.gov <bcoler@townoffairfaxca.gov>; mebrowns@solano-county.com <mebrowns@solano-county.com>; kjacobs@novato.org <kjacobs@novato.org>; bkircher@townofrossca.gov <bkircher@townofrossca.gov>; tkullaway@sananselmo.gov <tkullaway@sananselmo.gov>; maika@cityofsanrafael.org <maika@cityofsanrafael.org>; jmccormick@lovelafayette.org <jmccormick@lovelafayette.org>; meadows@ci.oakley.ca.us <meadows@ci.oakley.ca.us>; bpainter@cityofnapa.org <bpainter@cityofnapa.org>; Charles.Palmares@cityofvallejo.net <Charles.Palmares@cityofvallejo.net>; mperrey@cityofmillvalley.gov <mperrey@cityofmillvalley.gov>; gquinto@elcerrito.gov <gquinto@elcerrito.gov>; hollithiertiburontowncouncil@gmail.com <hollithiertiburontowncouncil@gmail.com>; Mary.Sackett@marincounty.gov <Mary.Sackett@marincounty.gov>; swilkinson@cityofbelvedere.org <swilkinson@cityofbelvedere.org>

1 attachment (264 KB)

Resolution-2020-04-Delegating-Energy-Procurement.DOCX.pdf;

Dear MCE Board Members:

I'm writing to request that the Board agendaize at the next Board meeting an item to address the possibility that certain energy procurement contracts were not properly authorized and/or executed and to ascertain whether material weaknesses exist within MCE's internal control environment surrounding the authorization and execution of such contracts.

Based on my review of MCE's adopted Board Resolution 2020-04 and the January 5, 2026, Executive Committee Board Packet, i.e., Agenda Item #05, C.2., it appears that certain energy procurement contracts may not have been properly authorized and/or executed. Please see Agenda Item #05, C.2. on page 9 under "Power Procurement & Content" at the link:

[MCE-Executive-Committee-Meeting-Packet_January_2026.pdf](#)

In particular, Agenda Item #05, C.2., identifies the attached Resolution 2020-04 as an adopted Board resolution delegating authority for certain energy contracts. Notably, Resolution 2020-04 states under "2. *Delegation to the Chief Executive Officer and Technical Committee Chair, Jointly*," that, "*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.*"

Moreover, Agenda Item #05, C.2. at the fifth bullet point under "Power Procurement & Content," states that *"Contracts 12 months+ to 5 years in length, the Board delegated authority to the CEO and the chair of the Technical Committee, with prior consultation to the Technical Committee."*

However, Agenda Item #05, C.2. states that prior consultation to the Technical Committee occurs at the beginning of each year when the CEO reports to the Technical Committee *"what is to come for the year regarding power supply needs"* and that certain *"specific contracts are not provided to the Technical Committee in advance of signature."*

Additionally, Agenda Item #05, C.2., states that *"MCE has had some instances where the Technical Committee Chair has been unavailable to execute agreements that have been previously consulted with Technical Committee...and MCE has had the Board Chair step in to prevent MCE from losing the deal in the market."*

To the extent the Board Chair authorized and executed contracts rather than the Chair of the Technical Committee - such a procedural defect may result in those contracts being void because they were not authorized and/or executed by the appropriate party. In fact, there is case law addressing situations where contracts entered into by a local government agency without obtaining proper internal authorization may make such contracts void, not merely voidable.

Furthermore, there may be accounting implications to the extent energy procurement contracts were not properly authorized and/or executed, including implications to MCE's financial statement audits.

Accordingly, I'm requesting that the Board engage an audit of its energy procurement contracts to ascertain which contracts were not properly authorized and/or executed and to hire outside legal counsel to ascertain the legal ramifications of any improperly authorized and/or executed contracts. The Board should also immediately inform its independent auditors of any situations involving improperly authorized contracts for their consideration. The Board should also engage an independent auditor to assess whether there are any material internal control weaknesses concerning the process for energy procurement. Moreover, the Board should consider revisiting Resolution 2020-04 to ascertain whether its current procedures for authorizing and executing energy procurement contracts are effective.

In the meantime, it's important that the Board, as fiduciaries, take steps to ensure that the CEO does not bind MCE into energy procurement contracts that are not properly authorized and executed.

With appreciation,

Alicia Minyen, CPA and CFE
415-722-9211

RESOLUTION 2020-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2018-03 AND DELEGATING ENERGY PROCUREMENT AUTHORITY

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 Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, 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 Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, Resolution No. 2018-03 set forth energy procurement authority delegated by the Board of Directors; and

WHEREAS, the Board intends that this Resolution No. 2020-04 replaces Resolution No. 2018-03; 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. 2018-03 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;
- 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; and
- c. in the event of an emergency or critical needs situation, such as exposure to volatile CAISO market conditions during extreme weather events, or a shortage in energy supply compared to load forecasted, short-term purchases, which includes transactions with existing counterparties in both written and oral format.
 - i. Oral transactions may only be executed with existing counterparties contractually enabled with MCE through an approved master agreement on a recorded telephone line where written receipts and voice recordings documenting such transactions are provided to MCE.

- ii. “Short-term purchases” for purposes hereof refers to Energy Procurement on the day-ahead energy market within the forecasted 30 days.
- iii. The CEO shall timely report any short-term purchases to the Board of Directors.
- iv. The CEO may delegate authority to engage in short-term purchases under this subdivision to staff, including the Chief Operating Officer or Manager of Power Resources.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 19th day of November, 2020, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin	X			
Contra Costa County				X
County of Napa	X			
County of Solano				X
City of American Canyon	X			
City of Belvedere	X			
City of Benicia	X			
City of Calistoga	X			
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax	X			
City of Lafayette	X			
City of Larkspur	X			
City of Martinez				X
City of Mill Valley	X			
Town of Moraga				X
City of Napa	X			
City of Novato	X			
City of Oakley	X			
City of Pinole	X			
City of Pittsburg	X			
City of Pleasant Hill	X			
City of San Ramon	X			

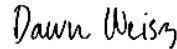
City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo	X			
City of San Rafael	X			
City of Sausalito	X			
City of St. Helena	X			
Town of Tiburon	X			
City of Vallejo	X			
City of Walnut Creek				X
Town of Yountville	X			

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CHAIR, MCE

Attest:

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SECRETARY, MCE