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Public Letter to MCE Board: Apparent Violations of Procurement Processes

From Nick Pappas <npappas@gmail.com>

Date Wed 2/18/2026 2:46 PM

To Shanelle.Scales-Preston@bos.cccounty.us <Shanelle.Scales-Preston@bos.cccounty.us>; MCE Clerk <clerk@mcecleanenergy.org>

Cc tkullaway@sananselmo.gov <tkullaway@sananselmo.gov>; Mary.Sackett@marincounty.gov <Mary.Sackett@marincounty.gov>; brian.colbert@marincounty.gov <brian.colbert@marincounty.gov>; sburdo@sananselmo.gov <sburdo@sananselmo.gov>

 1 attachment (301 KB)

2026_02_18_MCE Contract Consultation and Approval Violations.pdf;

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Dear MCE Board Chair Scales-Preston and MCE Board Members (bcc),

I am writing to draw your attention to recent revelations regarding apparent violations of the contract approval process presented by MCE staff at the 2/6 Technical Committee ([Staff Report \(p. 66\)](#), [video](#)). These revelations raise serious process, legal, and policy concerns, including potential legal risk for the board members involved in contract execution outside of established authorization protocols.

The attached technical memo is intended to support Board understanding of the situation and also provide important policy context on the implications of the board's current lack of oversight of MCE's short- and medium-term contracts as outlined in the Staff Report. These contracts represent the majority of MCE's annual budget and raise significant strategy and board policy questions which are not currently being presented to the board. Beyond the direct implications of this lack of oversight, this process leaves the board under-prepared to engage with the substantive strategy and policy issues currently before you related to rates, risk, and the value of environmental offsets.

As an MCE customer observing this period of turmoil for the agency's finances and rates, its governance structure, the integrity of its environmental claims, and other issues, I am looking to you as our elected board for reassurance that the agency can move forward with stability and in a manner which will serve my interests as both an MCE customer and as an advocate for robust climate action. Thank you for taking the time to engage seriously with the issues raised here and for moving swiftly to address the process and cultural issues which have led us to this challenging moment.

Best,

Nick Pappas
MCE Customer
San Anselmo, CA

To: MCE Clean Energy Governing Board
From: Nick Pappas, MCE Customer
Date: February 18, 2026

Re: Apparent Violations of Contract Approval Process Revealed at 2/6 Technical Committee Meeting

Dear Chair Scales-Preston and MCE Board Members,

I am writing to follow up on my [public comment](#) regarding *R.2020-04 Review Consultation and Execution of Certain Contracts*, Item #9 from the 2/6 Technical Committee, relating to MCE's apparent violations of required processes for board consultation and contract execution for medium-term energy contracts. As explained in [the Staff Report \(p. 66\)](#) and at the [2/6 meeting](#), MCE appears to be approving medium-term contracts outside of the established board consultation and authorization framework required by [MCE Board Resolution 2020-04 \(R.2020-04\)](#), with considerable legal, process, and policy implications for the agency.

In summary:

- Medium-term transactions represent the majority of MCE's annual energy budget (60%+) and are a primary driver of MCE financial performance and market risk.
- The MCE Board delegated the responsibility for oversight and approval of MCE's medium-term contracts to the Technical Committee (oversight) and its chair (approval) through R.2020-04.
- Staff appear to have routinely violated the requirements of R.2020-04 in failing to consult with the Technical Committee on medium-term contracts and through the repeated use of non-designated, alternate Board Members for contract execution, exposing the agency and board members involved to unnecessary risk.
- In lieu of consultation and education, MCE canceled over half of the monthly Technical Committee meetings scheduled since 2022, often going four months between meetings.

The net effect of these revelations is the removal of the MCE Board from decision-making on key policy questions related to the cost, risk, and environmental performance of its primary operational activity – buying energy products on behalf of its customers, rendering it unprepared for substantive strategy discussions on key issues, for example, the costs and benefits of continued purchases of environmental attributes as MCE strives to mitigate its significant rate differential with PG&E.

Among other examples, this flawed process fails to offer the board a meaningful opportunity to weigh the value of short-term environmental attributes as prices rose in 2024. It obscures MCE's financial relationships with fossil energy suppliers to the Board and public, removing the Board from important decisions on the health and environmental impacts of its expenditures. It removes board oversight from important policy decisions weighing cost and risk throughout the year. Perhaps most impactfully, it fails to educate or engage the board for readiness on larger policy and strategy discussions now entering central stage as MCE strives to navigate the choppy waters ahead.

With this letter, I am writing to emphasize to you the gravity of the situation and to reiterate my request that the MCE Board, as our elected representatives, act boldly and intentionally in fulfilling its obligation to provide effective oversight of MCE at this critical moment in the agency's history.

I. Overview of Apparent Violations of R.2020-04 – Consultation and Authorization

At the 2/6 Technical Committee meeting, staff presented a [legal analysis \(p. 66\)](#) describing MCE’s past practices for the implementation of R.2020-04.

The memo concludes that MCE complied with R.2020-04 through the annual consultation practice described below, which does not involve any consultation with the Technical Committee on specific contracts, solicitation activities, market dynamics or risk, or any of the other information necessary to substantively engage in its oversight responsibilities. The memo further asserts that execution of contracts by the Chair or Vice Chair is appropriate despite their lack of authorization in R.2020-04, the document through which the board established the authorization framework.

Neither of these conclusions appear to be consistent with a plain reading of R.2020-04’s requirements for medium-term contract approval. In light of the significant risk for the agency and board members involved, it may be prudent for the Board to consider retaining outside counsel and an independent auditor to make its own assessment of both past actions and acceptable behavior going forward.

A. *Past “Consultation” with Technical Committee Falls Short of Letter or Intent of R.2020-04*

Under R.2020-04, the Board clearly established an expectation that the Technical Committee would be consulted on medium-term contracts less than five years, and delegated execution of these contracts to the Technical Committee Chair jointly with the CEO¹. MCE Staff assert that the consultation requirement is met through annual, high-level reports from the CEO regarding general categories of energy products the agency might buy throughout the year, with no subsequent consultation regarding specific contracts or shifting market conditions as the year progressed.

One such [annual report](#)² was given at the beginning of the February 6 Technical Committee meeting to satisfy the consultation requirement for 2026: the report was exactly three minutes long, was presented verbally without any associated memo or presentation, provided no context on evolving market or regulatory conditions, and did not contain a single quantitative statement. The report [advises](#) that all subsequent consultation, including any substantive consultation regarding agency needs, market conditions, or product offers, will occur strictly between MCE Staff and its third-party consultant. Concluding that such a report meaningfully satisfies the intent of R.2020-04 reveals a troubling disregard for the foundational oversight role the Board clearly assigned to and expects of the Technical Committee.

These concerns are further aggravated by the [routine cancellation](#) of Technical Committee meetings where information and consultation could have occurred on a regular and on-going basis, with 26 of the committee’s 49 monthly meetings canceled since 2022 (12 since 2024), in four separate cases going four months between meetings. This approach offers the Technical Committee no ability to be meaningfully informed or educated on the medium-term purchases over which it ostensibly has governance responsibility.

¹ R.2020-04 (C) (2): “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.”

² A transcript is provided as an attachment to this memo.

B. Execution of Medium-Term Contracts by Chair or Vice Chair Violates R.2020-04

Compounding this lack of required consultation, MCE Staff have executed [at least twenty \(p. 67\)](#) one-to-five year contracts without the approval of the Technical Committee Chair as required under R.2020-04. Instead, Staff have executed contracts jointly with other board members to whom such authority was not delegated, establishing legal risk for both the agency and the board members involved. It does not appear that all of these board members are or were members of the Technical Committee or would have been involved in or aware of the required consultation within the Technical Committee about these purchases.

While urgency may arise in the contracting process, primarily for smaller, short-term transactions, a separate process exists for such urgent circumstances which delegates authority solely to Staff and is not applicable to the contracts in question. It is difficult to understand how such urgent circumstances arose *over twenty times* for *one-to-five year* contracts in a manner which required not only omission of required consultation with the Technical Committee but also execution through a non-designated, alternate Board Member. These contracts can represent tens of millions of dollars and go through multiple layers of origination, negotiation, and review before execution. An inability to schedule the designated and appropriate execution process with the Technical Committee Chair on more than twenty occasions cannot be easily rationalized as an issue of timing and availability.

II. Impact and Implications of Short- and Medium-Term Portfolio

These revelations raise concerns far beyond the immediate questions of legal errors, internal controls, and errors in judgment – they leave the Board largely uninformed regarding the bulk of MCE’s procurement activities, market risks, and procurement policy considerations.

I offer here a brief overview of key components and implications of MCE’s short- and medium-term portfolio, which comprises the majority of MCE’s annual expenditures in any given year. Only 25% of the [FY26-27 budget \(p. 53\)](#) is covered through long-term contracts (10+ years). Medium-term products include purchases of unspecified hedge energy³, purchases of Resource Adequacy, and purchases of environmental attributes⁴, such as Renewable Energy Credits and Carbon-Free Attributes.

Short- and medium-term contracting are the primary levers in managing MCE’s financial risk as the key levers in MCE’s hedging strategy, defining MCE’s financial position and resilience to shifting market conditions. These contracts play a leading role in MCE’s recent budget woes, as MCE continued significant purchases of short-term attributes despite dramatically rising prices [in FY24-25 \(p. 3\)](#). Other CCAs avoided similar budget pitfalls through consultation with their boards on adapted procurement targets.

³ There is some debate regarding whether hedges are direct transactions for energy or simply a financial derivative of a forward energy purchase. MCE [self-reports](#) its hedge purchases as a “PPA” (Power Purchase Agreement) for “Available Energy” from “System Power” designated in “GWh” (an unit of energy) in the energy supply plans it submits to the California Energy Commission; MCE also characterizes hedges as “short-term, fixed-price energy contracts” in its annual consultations with the Technical Committee. Regardless, any such semantic debate is a distraction from the merits of the policy and oversight issues raised here regarding financial relationships with fossil generators.

⁴ There is some debate regarding whether index-plus contracts are purchases strictly of environmental attributes or include associated energy. Index-plus contracts are structured to limit the buyer’s responsibility to the cost of the attribute, with the seller liquidating the energy into the CAISO and retaining associated revenues – in effect, the buyer has no financial relationship with the energy produces. Again, any such semantic debate has no bearing on the merits of the policy discussion regarding the additionality of products reshuffled between utility portfolios.

A. Energy Hedges and Resource Adequacy Transactions

Hedges and Resource Adequacy (RA) are typically the [two largest line items \(p. 24\)](#) in MCE’s annual budget, each individually exceeding MCE’s long-term contracts in recent years. Hedges are forward energy purchases to manage MCE’s energy cost exposure in CAISO representing [\\$225 million \(p. 53\)](#) of the FY26-27 budget (36%). Resource Adequacy contracts are required commitments from generators, such as gas or battery storage, to firm up the reliability of MCE’s annual portfolio as required by state law, representing \$106 million (17%) in FY26-27. Hedges and RA are the key channels through which MCE maintains financial relationships with fossil energy suppliers, with correspondingly important environmental policy considerations which are not currently being discussed with the Board.

While these hedge and RA transactions are reported [publicly](#) to the Energy Commission, outlining specific power plants, suppliers, and resource characteristics, MCE provides [much less detailed reports to the board \(p. 12\)](#) which omit these important details. With only these limited reports, board members would have no idea that many of these transactions are directly or indirectly with natural gas plants, much less that such transactions include direct financial support for natural gas plants in disadvantaged communities within MCE’s service territory.

While MCE’s website [has an established goal](#) to decarbonize half of its RA purchases by 2030, it lags far behind its peers in replacing gas with clean resources. In the [latest report \(p. 70\)](#), MCE had more fossil RA than any other northern California CCA, with only 16% of its RA coming from clean sources, compared to over 30% for most of its Bay Area peers. Again, the board is not being consulted on policy implications, policy targets, or actual procurement options for RA under the current staff- and consultant-led process. These oversight gaps are the precise targets of the consultation and reporting requirements established in R.2020-04.

B. Short-Term Environmental Attributes

Like hedges and RA, MCE’s index-plus environmental attributes are purchased primarily through the short- and medium-term contracting process. MCE’s process of buying short-term attributes to “offset” the unspecified energy it purchases from hedges or from CAISO is a practice known as [resource shuffling](#), a [discredited approach](#) which simply moves emissions between utilities without any net environmental benefits. Specifically, MCE’s longstanding practice of buying index-plus attributes from existing hydroelectric and wind facilities already financed, built, and under long-term contract with a utility offtaker appears to be a clear example of resource shuffling –accounting transactions which shift emissions (and considerable funds) from MCE to another utility with no net emissions benefits⁵.

Among other examples, major MCE supplier Grant County PUD provides one such [well-documented and self-described](#) emissions reshuffling scheme, replacing the hydropower it sells to MCE with fossil energy for [its own customers \(p. 71\)](#). Merced Irrigation District, owner of the Exchequer Dam, raised its customers’ emissions by 60% through hydropower sales to MCE – selling its customers [95% unspecified power \(fossil energy\)](#) in 2024. A similar purchase by SCE of hydropower from the Bonneville Power

⁵ It is important to distinguish resource shuffling, transactions for attributes which are owned by or contractually committed to another utility, from energy purchased from *merchant resources* not already under contract. While the latter provides financial support to clean resources which may otherwise exit the market, given generator preferences for long-term contracts, merchant resources are few and far between and represent a minor fraction of current or past MCE attribute purchases.

Authority, longtime supplier to MCE, was rejected by the California Public Utilities Commission as "[an example of resource shuffling](#)" (p. 28).

Characterizing MCE's index-plus purchases as resource shuffling is far from a fringe perspective:

- Academic experts have identified these practices as resource shuffling [as far back as 2008](#), [reaffirming the concern specifically in the context of CCAs in 2018](#), and most [recently featuring the issue as a discussion](#) at UC Berkeley's 2023 POWER Conference.
- The Marin Conservation League, perhaps MCE's longest-standing environmental booster, [echoed these critiques](#) in a recent memo, with [no substantive rebuttal](#) from MCE, as MCL correctly [notes](#).
- The former CEO of Monterey Bay Community Power (now 3CE) [told his board in 2020 \(p. 43\)](#) that index-plus purchases are "A Paper Product with No GHG Reduction Benefit," explaining that "as an accounting exercise with no environmental benefit, MBCP — like all other CCAs— acquires renewable credits from ineligible resources like large hydro in order to offset unspecified power purchases (used to balance MBCP's load on an hourly basis) on its Power Content Label."
- A longtime Silicon Valley Clean Energy board member (and former chair) recently framed [purchases from existing hydroelectric and wind facilities](#) as "just doing a shell game" noting that, regarding Power Content Label reporting, "there's still some of that shell game stuff going on," encouraging the agency to "keep it more real."
- In recognition of these concerns, the Legislature directed the California Public Utilities Commission and other agencies to [address resource shuffling \(PUC 454.53 \(a\)\)](#) in Senate Bill 100, with regulations currently in development.

While state regulators cannot yet protect MCE customers from wasting money on these attributes, a functional, engaged consultation process would give the MCE Board the information and daylight necessary to more effectively steer ratepayer funds towards effective products. MCE's current practice actively works against this daylight – while these transactions are readily available in public, annual reports to the California Energy Commission, the Technical Committee is presented with a simplified summary table lacking any detail on specific sources. This document, tucked into a [consent item \(p. 7\)](#), is, ironically, part of the required approval process to file the more detailed, public document with state regulators.

Purchasing these offsets has added hundreds of dollars to MCE customer bills in recent years, and it is worth noting that these purchases are strictly for voluntary marketing claims. Even as prices have declined, [MCE proposes to spend \\$54 million \(p. 53\)](#) on short-term attributes in FY26-27 – around \$90 per household. Do you have enough information to justify these added costs to your constituents?

III. Moving Forward with Robust Board Oversight and Public Engagement

MCE's past practices, including the apparent violations of R.2020-04, need not be a template for the future. While Staff [maintain](#) that past consultation and authorization practices are legally defensible – a perplexing and [perhaps unstable](#) conclusion – the Board must go beyond redressing the formal process errors and make broader efforts to ensure an agency culture which meets Board oversight with enthusiasm.

In reading this letter, I hope you have gained a deeper appreciation for the significance and consequence of the MCE Board's role in overseeing the agency's short- and medium-term contracts, and the gravity of

the concerns I and others have raised with past violations of established oversight protocols. As the agency confronts unprecedented financial challenges, I hope that you will take this moment to refresh and refocus on providing the active oversight and governance required of you as a member of MCE's elected board and undertake the bold actions necessary to protect MCE customers and safeguard the future of this agency.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Pappas', with a stylized, cursive script.

Nick Pappas

MCE Customer, San Anselmo, CA

Attachment: Transcript of February 6, 2026 CEO Report Asserted to Satisfy R.2020-04 Consultation Requirement (Auto-Generated via YouTube Transcript)

“As we do in the Technical Committee at the beginning of each year, I will spend a few minutes going over our power procurement for the months ahead. As usual and as directed in MCE's Integrated Resource Plan and Risk Management Policy, particularly Section 6.2 and 6.3, MCE will be soliciting and securing needed power supply this year under multiple agreements that are less than 5 years in three categories to conform to the market.

“These transactions tend to occur with a quick turnaround time. So the first category is CAISO energy hedge contracts to create cost certainty when load and generation do not match. That typically occurs four times per year. These are short-term fixed price energy contracts to hedge MCE's load consistent with the provisions of our Integrated Resource Plan. The second product is short-term renewable energy to meet compliance and fill any needed shortfall in planned or delivered volumes. Resource adequacy is the third category and that is purchased to fill any gaps in regulatory compliance on a monthly and also on an annual basis for any short positions that MCE has this year.

“As predominantly a net buyer, MCE manages its market liquidity risk through purchasing at different intervals and maintaining a diverse set of counterparties to transact with. MCE determines the quantity of energy it will contract for each year using it using our planning model. And this model calculates a load and resource balance which defines forecasted load. It also defines energy under contract and MCE's open positions in the various energy product types including renewable energy, carbon-free energy, energy hedges, and MCE's procurement targets. It also includes an outline of the delivery term and quantity of energy by product type for which MCE will seek contracts in this upcoming year.

“And while we don't share out specific open positions for each product since that would place MCE at a disadvantage in the market, instead we use our planning model to guide the procurement of these contracts. These contracts will be identified and entered into by staff in partnership with our external energy consultants, Pacific Energy Advisors, and executed under the assigned authority. Also, these contracts will all be reported out to the full board after execution. Does anyone have any questions or concerns before I move on to the next item?

“All right, the next item is our risk oversight committee. I just wanted to report out that our risk oversight committee met on December 12th of last year. We meet on a quarterly basis and I'm just reporting out that we reviewed open positions, cost trends, and regulatory impacts on business needs. And that is it for my report. Happy to answer any questions.”