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Amended and restated public comment from CoST to MCE Board Members

From Lucy Dilworth <lucy.dilworth@gmail.com>

Date Tue 4/14/2026 9:09 PM

To MCE Clerk <clerk@mcecleanenergy.org>; Shanelle.Scales-Preston@bos.cccounty.us <Shanelle.Scales-Preston@bos.cccounty.us>; bos5@bos.cccounty.us <bos5@bos.cccounty.us>; darling@walnut-creek.org <darling@walnut-creek.org>; eduardo_martinez@ci.richmond.ca.us <eduardo_martinez@ci.richmond.ca.us>; mbelotz@danville.ca.gov <mbelotz@danville.ca.gov>; jmccormick@lovelafayette.org <jmccormick@lovelafayette.org>; meadows@ci.oakley.ca.us <meadows@ci.oakley.ca.us>; gquinto@elcerrito.gov <gquinto@elcerrito.gov>; DBailey@herculesca.gov <DBailey@herculesca.gov>; mayor@walnut-creek.org <mayor@walnut-creek.org>; dmurphy-EXT <dmurphy@pinole.gov>; laura.nakamura@cityofconcord.org <laura.nakamura@cityofconcord.org>; elizabethp@sanpabloca.gov <elizabethp@sanpabloca.gov>; msandhu@fairfield.ca.gov <msandhu@fairfield.ca.gov>; gthiel@moraga.ca.us <gthiel@moraga.ca.us>; SVerose@sanramon.ca.gov <SVerose@sanramon.ca.gov>; cesar_zepeda@ci.richmond.ca.us <cesar_zepeda@ci.richmond.ca.us>; bzorn@cityofmartinez.org <bzorn@cityofmartinez.org>

You don't often get email from lucy.dilworth@gmail.com. [Learn why this is important](#)

Apologies, I am resending this comment in the body of this email to correct two facts

For those of you who prefer to view this comment as a separate document see the attached Google Doc:

<https://docs.google.com/document/d/1SR-GpJPQqAgJwggIwmF3gzkkqd2HKkFNQKNyC7OgsE0/edit?tab=t.0>

Coalition of Sensible Taxpayers

Public Comment on Proposed Resolution 2026-02 for MCE Board Meeting April 15, 2026

Dated: April 14, 2024

Via Public Comment and Electronic Submission

To the Board of Directors:

This letter serves as a demand that the Board of Directors decline to adopt Resolution 2026-02 and instead cure ongoing violations of Resolution 2020-04, the Brown Act, and related fiduciary obligations.

I. Resolution 2026-02 Is Structured to Evade the Brown Act

Resolution 2026-02 expressly authorizes the CEO and a single Board officer to approve energy procurement contracts based on “individual knowledge,” rather than as part of any committee or Board action.

This structure:

- Avoids the prudent actions of a deliberative legislative body, while it
- Gives individuals the power to exercise core Board authority over major contracts with little to no information

The stated intent that these officials act “not on behalf of a committee or board” is a deliberate attempt to avoid Brown Act requirements, including:

- Open and noticed meetings
- Public participation
- Transparent deliberation

This is imprudent and potentially unlawful in both form and effect.

II. The Delegation of Authority Without Internal Controls Is Extraordinary

The Resolution would authorize execution of procurement contracts that are:

- Contracts up to 10 years in duration
- With a notional value up to \$100 million
- Approved by two individuals acting outside any legislative body

No reasonable safeguards are imposed. Resolution 2026-02 has:

- No requirement of contemporaneous review
- No consequential budget constraints
- No reasonably informed contract approvals
- No requirement of public deliberation
- No precise or enforceable reporting provisions within the Resolution

Delegation at this scale, without procedural guardrails, constitutes an abdication of the Board's statutory and fiduciary responsibilities.

III. The “Prior Consultation” Standard for Board Officers Is Illusory

The Resolution permits approval of contracts by a designated Board member based on his/her consultation with MCE staff at any point within the preceding 12 months.

This standard:

- Allows reliance on stale and outdated information
- Imposes no obligation to use, verify, or update that information
- Permits decisions based on undefined “individual knowledge,” regardless of source or accuracy

In a volatile energy market, such a standard is facially irrational and cannot constitute meaningful oversight.

IV. The Resolution Reduces, Not Enhances, Transparency

Staff asserts that the Resolution will improve “oversight and transparency.” The opposite is true.

Resolution 2026-02:

- Eliminates committee-based review
- Avoids Board-level deliberation
- Reduces documentation and accountability
- Moves decision-making out of public view

It is, by design, a mechanism to evade transparency obligations.

V. The Proposal Must Be Viewed in Light of Documented Non-Compliance

CST's requests under the California Public Records Act so far have revealed:

- Widespread failure to comply with Resolution 2020-04
- Minimal evidence of required Technical Committee consultation or approval
- Execution of numerous contracts without documented adherence to governing procedures

These failures occurred during a period marked by:

- Substantial budget overruns,
- Including energy costs that surged by approximately \$200 million from fiscal 2024 to fiscal 2025

Rather than curing these deficiencies, Resolution 2026-02 would:

- Expand delegated authority
- Reduce procedural safeguards
- Institutionalize non-compliance

VI. The Timing and Withholding of Records Raise Additional Legal Concerns

Following CST's November 22, 2025 CPRA request:

- Only a negligible number of heavily redacted energy procurement contracts have been produced
- Despite CST's estimate that MCE has executed approximately 45–65 contracts annually since 2023

Many of the produced contracts have now matured, eliminating any credible claim of ongoing effects of market sensitivity.

The continued withholding and redaction of records, combined with the restructuring proposed by this resolution, support a reasonable inference that MCE is attempting to shield from public scrutiny its legally unauthorized contracting practices in the past and its functionally unrestrained contracting practices in the future.

VII. The “Market Sensitivity” Justification for Secrecy Is Internally Inconsistent

MCE has justified secrecy on the basis that market sensitive contracts must be executed quietly and rapidly in volatile markets.

However, Resolution 2026-02 allows approvals based on consultations up to one year prior.

These positions cannot be reconciled:

- If markets are fast-moving, year-old information is irrelevant
- If year-old information is sufficient, secrecy is unnecessary

Additionally, MCE is a relatively insignificant market participant, so its individual contracts are unlikely to independently move market prices.

VIII. The Resolution Lacks Basic Fiscal Guardrails

The Resolution contains:

- No consequential budgetary constraints
- No contemporaneous oversight or reporting requirements
- No enforceable internal controls

This is particularly concerning given that MCE exceeded its fiscal 2025 budget for energy costs by approximately \$80 million without Board knowledge or approval.

IX. Demand for Immediate Action

CST hereby demands that the Board:

1. Decline to adopt Resolution 2026-02
2. Maintain or restore Brown Act-compliant oversight, including review and approval by a duly constituted committee or the full Board
3. Produce unredacted or minimally redacted contract records responsive to CST’s CPRA request, consistent with applicable law and without further delay
4. Defer any governance changes until completion of the ongoing governance review process

Sincerely,

Lucy Dilworth
Coalition of Sensible Taxpayers