

MARIN CLEAN ENERGY

BOARD MEETING MINUTES
Thursday, November 19, 2015
7:00 P.M.

THE CHARLES F. MCGLASHAN BOARD ROOM
1125 TAMALPAIS AVENUE, SAN RAFAEL, CA 94901

Roll Call: Chairperson Kate Sears called the regular Board meeting to order at 7:08 p.m. An established quorum was met.

Present: Sloan Bailey, Town of Corte Madera
Tom Butt, City of Richmond
Barbara Coler, Town of Fairfax
Kevin Haroff, City of Larkspur
Rich Kinney (Alternate to Genoveva Calloway), City of San Pablo
Garry Lion, City of Mill Valley
Greg Lyman, City of El Cerrito
Bob McCaskill, City of Belvedere
Andrew McCullough, City of San Rafael
Emmett O'Donnell, Town of Tiburon
Alan Schwartzman, City of Benicia
Kate Sears, County of Marin
Carla Small, Town of Ross
Brad Wagenknecht, County of Napa
Ray Withy, City of Sausalito

Absent: Denise Athas, City of Novato
Ford Greene, Town of San Anselmo

Staff: Greg Brehm, Director of Power Resources
John Dalessi, Operations & Development
Kirby Dusel, Resource Planning & Renewable Energy Programs
Katie Gaier, Human Resources Manager
Brian Goldstein, Resource Planning & Implementation
LaWanda Hill, Administrative Assistant
Darlene Jackson, Board Clerk
Elizabeth Kelly, Legal Director
Michael Maher, Maher Accountancy
David McNeil, Finance and Project Manager
Beckie Menten, Director of Energy Efficiency
David Snow, Special Counsel
Shalini Swaroop, Regulatory & Legislative Counsel
Jamie Tuckey, Director of Public Affairs
Dawn Weisz, Chief Executive Officer

1. Board Announcements (Discussion)

to purchase power from Central Valley and require that they also develop 1 MW here. She noted the project's size will be similar to the San Rafael Airport project and it will retain the same price for that power supply as the larger, Cottonwood Solar project in the Central Valley.

- MCE is now underway with the strategic planning process. The Board of Directors will soon receive an email regarding an invitation to participate in a survey and, if interested, in a one-on-one interview.
- She reminded Board Members that she and Vice Chair Butt will be participating in the UN Climate Summit in Paris in just over a week. The convention sets out the framework for action in stabilizing CO2 levels to avoid interference with climate systems. MCE has been invited to present at 3 events which she briefly described and will be hosting an information table. They will discuss Community Choice and hope to raise their profile within the state. Vice Chair Butt added that he will also attend a Mayors' Reception with approximately 300 Mayors from around the world.
- Board Member Haroff asked about security issues at the Paris conference. Ms. Weisz said she expects very tight security at the conference and MCE staff has been advised that two demonstrations are being canceled. However, organizers are looking at a strategy to encourage cities around the globe to provide smaller demonstrations and they hope to have some success.
- Vice Chairperson Butt stated he received notice from the Office of the Mayor of Paris stating the conference will be held no matter what. Chairperson Sears spoke about a blog she read about the Climate Summit in Paris as a peace conference which she thought would serve as a great follow-up to the tragic events, and she is glad MCE will be in attendance.
- The holiday party is scheduled for Friday, December 11th at 6:30 p.m. at the Falkirk Mansion.

4. **Consent Calendar (Discussion/Action)**

- C.1 10.15.15 Board Meeting Minutes
- C.2 Approved Contracts Update
- C.3 Monthly Budget Report
- C.4 1st Addendum to 7th Agreement with Maher Accountancy
- C.5 1st Addendum to 4th Agreement with Ellison, Schneider & Harris, LLP
- C.6 4th Addendum to 3rd Agreement with Association for Energy Affordability
- C.7 2nd Addendum to 4th Agreement with Community Energy Services Corporation
- C.8 MCE Proclamation on Climate

ACTION: It was M/S/C (Butt/Lion) to approve Consent Calendar Items C.1 through C.8. Motion carried by unanimous roll call vote: (Abstain on Item C.1: Bailey, Coler, Lyman, Sears, Schwartzman and Withy; Absent: Athas, Greene and Wagenknecht).

5. **Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation**

monitoring and reporting program, and consideration of direction to staff to proceed with project implementation (Discussion/Action)

Greg Brehm, Director of Power Resources stated that the final comments on the Draft EIR were responded to last Thursday and the FEIR for the MCE Richmond Solar PV Project is ready for certification. He then introduced Abe Leider, the EIR consultant.

Abe Leider, Rincon Consultants, said as background the three topics covered in the EIR letters received were biology, hazardous material and hydrology/water quality. All topics on the State's environmental checklist are covered in the EIR and other potential impacts were identified and outlined in the Initial Study. The three topics were considered to have potential significant impacts so they were brought forward into the body of the EIR.

Mr. Leider said the EIR was drafted, circulated for a 45-day comment period and MCE received five comment letters. Two of those letters were relevant to the analysis and conclusions; one from California Fish and Wildlife and one from an attorney representing several clients regarding the topics covered in the EIR regarding biology, hazardous materials and hydrology/water quality. Section 8.0 [of the Final EIR] is the Response to Comments section. He said the letters are marked with each comment delineated, and responses to individual comments are given which he briefly outlined.

When the pre-construction surveys are complete and the proposed Mitigation, Monitoring and Reporting program is in place, Rincon determined that the impacts and mitigations would remain less than significant as they were in the Draft EIR and no further changes were required. He reviewed certain specific comments which were evaluated and determined that the mitigation program in the EIR was sufficient. However, additional measures were added, although not required, to memorialize existing regulatory requirements and further ensure the impacts would remain less significant and to reinforce the existing mitigations identified.

Mr. Leider said a Board Member brought up a comment regarding potential impacts from PV photovoltaic arrays attracting birds and birds crashing into them causing mortality. This issue is addressed in Responses 5.26, 5.50 and 5.54 and it does occur occasionally depending on the location of the array and other factors.

Mr. Leider said there were two main comments regarding hazards and hazardous materials. He explained that one portion of the site is a capped landfill and one is a filled fertilizer pond. One concern was that the weight or distribution of the photovoltaic arrays on the landfill cap could compromise the integrity of the cap. Additional Geotechnical research was conducted on this issue to understand whether or not this could occur based on the capacity of the cap to take additional weight and differential settlement of the cap over time. He added that these sites are located within a remediation area at the refinery, and oversight and monitoring of the infrastructure is conducted by the refinery as well as by the Regional Water Quality Control Board.

Mr. Leider stated the other issue related to the pond site and whether pilings driven into the filled and compacted soil could potentially penetrate through the pond structure and be a conduit for any contaminants in the pond to move into native soil or groundwater below. He said they discussed this with the engineers on the project, reviewed profiles of the pilings and the profiles of the fill, and confirmed that the pilings would not extend below the liner. Therefore, it would not be a significant impact. Additional information was also added in this area to bolster those conclusions.

Board Member Coler referred to the findings of the EIR and said one page mentions that the bird nesting season is September 16th January 31st; however, the Department of Fish and Wildlife identifies the season as February 1st to August 15th. Mr. Leider explained that the period fluctuates a bit depending on the project and location and they could adjust this in the EIR.

Board Member Coler commented on her experience in cleanup of hazardous waste sites and dealing with landfills and old hazardous waste landfills which typically were poorly constructed. She asked if those contractors installing the solar installation will have 40 hours of health and safety training in the event of exposure. Mr. Brehm responded that one of the mitigations is that all workers on site must be hazardous materials-certified.

Board Member Coler asked and confirmed with Mr. Leider that the project was initially set up in three phases and the final two phases were combined into one. The 3.5 MWs are tracking arrays which are penetrating and they will not be on the landfill, with the piles driven into 9 feet of clean soils.

Board Member Lion asked Mr. Leider how often is it that a citizens group hires a lawyer and a couple of environmental law litigation specialists to go through the EIR in such detail. Mr. Leider stated this happens from time to time and it is not uncommon. Chairperson Sears and Board Member Haroff commented that this occurs frequently, and MCE should not be deterred from moving forward.

Board Member Lyman thanked the consultant for adding mitigation measures 2.D through 2.F which deal with pre-construction surveys and vehicle speeds, stating they are mitigations above and beyond impacts and address many of the comments included in correspondence.

Chairperson Sears opened the public comment period.

Rachael Koss, an attorney with Adams Broadwell Joseph & Cardozo, and representing Bay Area Citizens for Responsible Solar, said most issues identified in their comment letter on the DEIR remain unaddressed. She said CEQA does not authorize MCE to be the lead agency for this project. Therefore, MCE has no authority to certify the FEIR. CEQA has two ways to be a lead agency; if the agency carries out the project or the agency is the owner and approves the project, and MCE is not doing either of those. The City of Richmond is the applicant for the design review permit for the project and Stion Corporation is the owner of this project that will design, construct and operate it. She said MCE is merely the utility that is buying the electricity generated from Stion's project. She then submitted two hard copies of lengthy written comments to the Board Clerk. Ms. Koss was unable to provide an electronic copy.

Vice Chair Butt asked and confirmed that Ms. Koss represents Bay Area Citizens for Responsible Solar. He said the EIR has been in progress for several months and asked why the organization has waited until now to question the choice of the lead agency. Ms. Koss said they learned last Friday that MCE is not the owner of the project. They received documents last Tuesday from MCE and explained that they do not agree with the current process.

Mr. Brehm stated MCE staff had extensive consultation with the City of Richmond before taking on lead agency status and the City had no issues with it.

Chairperson Sears called for comment from Legal Counsel.

CEO Dawn Weisz asked and confirmed Ms. Koss's employer is Adams Broadwell Joseph & Cardozo of Santa Rosa, and suggested taking up the next item until counsel could review the documents submitted by Ms. Koss.

Chairperson Sears moved up Item 7 for discussion.

7. MCE Compensation Analysis (Discussion/Action)

Ms. Weisz stated as background, the item was discussed at the last Board meeting. Over the last 9 months MCE has grown. During recruitments conducted over this time staff has found there is a mismatch between the compensation ranges they were associating with various positions and has had difficulty attracting and retaining people to fill necessary positions. Staff conducted analyses on an ad-hoc basis, position-by-position instead of relying on the original benchmarks of long ago.

It was determined in the spring of last year to conduct an over-arching compensation analysis for all positions. This process was conducted over a 4-month period and reviewed by the Executive Committee. The recommendation was to make some adjustments to compensation ranges to bring them in line with where the market is for each position. They also brought in an external firm with expertise, and they identified some additional comparative agencies. Also what helped in this process was that there are other CCA programs with which to compare MCE staffing.

Ms. Weisz stated they also looked at whether they should make an adjustment to ranges to account for the cost of living and the cost of housing in San Rafael because they want to attract employees who live near or in the community. After much discussion with the Executive Committee, it was recommended that they adjust the newly identified compensation ranges by 15% on the top end of the range. This recommendation is before the Board of Directors tonight.

In focusing on the recommendations, Ms. Weisz said the first is to approve the adjusted compensation ranges to align with the current market study and set the top of each range at 15% above median, keeping the bottom end of the range where it is based on the new compensation study. The second recommendation is to direct staff to adjust existing compensation ranges if needed when new or updated comparators are identified to stay current with market conditions. This would allow MCE to stay current and show that they are able to adjust in a timely manner when needed. The last recommendation is to direct staff to prepare a FY 2015 budget adjustment for a future Board meeting comprised of unanticipated revenues brought in from payments on renewable projects and to use those revenues to off-set the staffing adjustment costs, which are included in the attachment.

Chairperson Sears referred to the second recommendation; to direct staff to adjust existing compensation ranges, if needed. She asked if the proposal is for staff to adjust the compensation range without bringing it back for Board approval and asked what this would be based on.

Ms. Weisz explained that if there are 9 comparable salaries for a specific position and if a change is brought to staff's attention, they would add this into the formula of calculating what the range should be with all territories for that specific position. If there is an adjustment in any direction they would seek to change the range on an as-needed basis.

MCE also has almost 200 action plans created on the web portal. Ms. Menten noted that some Board Members have gone online and gone through the process of auditing their home and developing action plans to save energy, and encouraged all Board Members to do this to provide feedback. Lastly, Ms. Menten reminded the Board that the program results information is posted on the website on a monthly basis, and she pointed to the results drop down from the energy efficiency bar of the MCE website where this information can be found.

Regarding 2016 application updates, Ms. Menten said staff officially filed the application with the CPUC in October. The final document includes the business plan and the program implementation plans which have strategies per sector. The actual application is 20 pages and it lays out some of the foundational arguments for why MCE wants the default administrator status and why they are looking at such an expansion of programs. She reiterated the single point of contact in the critical hub and said staff is presenting MCE's position as a local government agency which gives them a strategic advantage over other implementers in that they already have relationships with community organizations, contractors, water utilities, and other boards which the MCE Board Members serve on which help to facilitate connections to expand their programs. She said MCE's public affairs team held over 200 public events this year, which solidifies MCE's role in community activities.

Ms. Menten then referred to the GHG impacts in the business plan. She pointed out those associated with MCE's electricity purchases and said because MCE is cleaner than the default provider they are saving close to 59,000 tons of CO₂ in the years they have been operating between 2010 and 2013. In projecting GHG savings from the 2016 energy efficiency application, they find they are projected to achieve 30% of the GHG emissions of the organization in the same time and period. Just by doing energy conservation and demand reduction, significant impacts can be achieved.

Regarding next steps, Ms. Menten said now that MCE's application to the CPUC has been officially filed and accepted, protests will be due December 14th and she expects a fairly robust set of protests from the utilities. In early 2016, MCE will be hosting a workshop that parties can attend and hear more about their proposal and ask questions. MCE will hold hearings and provide further testimony as part of the proceeding schedule and then there will be a proposed decision. Staff does not anticipate a decision any sooner than April but as late as September so staff can get started on the programs.

Lastly, Ms. Menten displayed the many documents on MCE's website and pointed to the various links, noting that everything included in the full application is also posted.

Chairperson Sears said she was not at the last Board meeting because she was in Rojasthan, India where she was looking at extremely old cities and forts and palaces. She took a photo of wind energy generation turbines in the distance and said Rojasthan generates a tremendous amount of wind energy that it exports to other parts of India. This is a model of what the government is trying to get all of the different states to do to get heavily into wind power, and she forwarded a photo to Ms. Menten.

Board Member Haroff congratulated the Energy Efficiency team for their hard work this year, and for getting the application on file. He said the Board has been supportive of their efforts and he expressed his sincere appreciation of the team's accomplishments. Ms. Menten thanked him and said she will pass his comments on to her team.

Chairperson Sears returned to Item 5 and asked for input from legal counsel.

5. **Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation monitoring and reporting program, and consideration of direction to staff to proceed with project implementation (Discussion/Action)**

David Snow, MCE's outside Counsel, stated that **the commenter Ms. Koss asserted that MCE would not be the appropriate lead agency for this project.** However, pursuant to the State CEQA guidelines there are various criteria for identifying what the proper lead agency would be. The first criterion is if a project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located in the jurisdiction of another public agency.

There are other criteria, one of which is where more than one public agency equally meets the criteria set forth in the guidelines, the agency which will act first on the project in question shall be the lead agency.

With that background, in September 2014 the MCE Board of Directors authorized the exploration of this site for a potential solar project and to look at undertaking the environmental analysis of a solar project on this site and explore leasing the subject property for that project. MCE is the lessee of the subject property at this time. The lessee under that lease has an obligation to comply with CEQA and to obtain all necessary permits for the development of the project, including those from the City of Richmond. There are provisions that allow the lessee MCE to sublet, which would be to Stion Corporation. The sublease cannot be any longer than needed to allow the developer to realize the tax credit benefits, which reflects the fact that the Stion sublease is basically a financing mechanism for this project. Ultimately, Mr. Snow said it is his understanding that this project will ultimately be owned by MCE.

With respect to the mitigation measures, MCE is the implementing entity for those measures and MCE will be overseeing Stion Corporation and directing to ensure those mitigation measures are being complied with. He also noted that the City of Richmond has participated in this process as a responsible agency and acknowledged MCE's role as the lead agency.

Lastly even if the City of Richmond was an appropriate lead agency along with MCE, which he does not believe it is, the agency which acts first is the lead agency and here MCE is acting first on this project and therefore would be the appropriate lead agency. He then turned over the matter to Mr. Brehm and Mr. Leider.

Mr. Brehm stated the commenter provided additional comments regarding other PPAs that MCE executed in other jurisdictions in the Central Valley, specifically in the City of Corcoran which is the Cottonwood Solar Project. That project was one of the first projects MCE signed but it was undertaken by the developer through the City of Corcoran long before MCE came into the process. Therefore, that agency, Corcoran, started the process and this is why the City of Corcoran was the lead agency for that CEQA document and not MCE. MCE generally requires that a project submitted through its Open Season RFO must have already have completed its CEQA process and posted a Notice of Determination before MCE will consider a project.

Abe Leider, Rincon Consultants, clarified that he and MCE's Environmental Coordinator Bruce Barnett read through the late letter from Ms. Koss and the comments appear to be the same comments generally as in the original letter and the same which they already responded to in the FEIR.

Chairperson Sears asked for questions or comments from the Board.

Board Member Haroff said he appreciates the original commenter's participation in tonight's hearing and thoughts provided and also appreciates the response on the legal issue, particularly with respect to the lead agency. In reflecting on his own person experience where he has seen ample precedent under CEQA for allowing flexibility in the choice of lead agencies for the performance of environmental review for projects and he sees nothing inconsistent with both the CEQA guidelines and that precedent in the role MCE is playing as lead agency for this project. Therefore, he thinks MCE is in the best position as an entity participating in the success of this project, appreciates the City of Richmond's role in its review process and suggested moving forward.

Board Member Coler added that having worked in a public sector agency for 22 years, a State agency and subsequently a regional government agency for 5 years, she has personally been involved in many CEQA projects and she reinforced Board Member Haroff's comments, and voiced appreciation for the legal opinion.

Board Member O'Donnell said it is a sad day that CEQA has really become less and less about the environment and more and more about power. Governor Brown has tried to address this with reform to CEQA and this item follows that direction.

Noted Present:

Board Member Wagenknecht arrived and was noted present at 8:00 p.m.

ACTION: It was M/S/C (Butt/Haroff) to adopt Resolution 2015-06 of the Board of Directors of Marin Clean Energy Certifying the Final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act and adopting a mitigation monitoring and reporting program, and direction to staff to proceed with project implementation. Motion carried by unanimous roll call vote: (Absent: Athas and Greene).

8. Communications Update (Discussion)

Communications Director Jamie Tuckey referred to MCE's customer participation and enrollments and said she continues to report that their Light Green customer base is growing. Since September MCE has had almost 400 Light Green customers sign up and these were people who previously had opted out. She also reported MCE is conducting a small enrollment of approximately 200 customers which is scheduled in December. These customers are from communities throughout MCE's service area and staff became aware of this group earlier in the year as never having been offered service. This was a PG&E error and staff is sending out enrollment notices now.

Ms. Tuckey reported on MCE's Deep Green participation, stating there were 114 signups since September throughout MCE's service area. This is attributable to MCE's advertising campaign, advocate work promoting the program, mail-out of the power content label and the new 100% renewable brochure advertising Deep Green and Local Sol. The other reason for the spike is because MCE is allowing people for the first time to be able to sign-up for Deep Green at events without their PG&E account number.

