



# County of Monterey

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

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**File #:** ORD 17-001, **Version:** 1

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- a. Introduce, waive reading, and set March 21, 2017 as the date to consider adoption of an ordinance authorizing the implementation of a Community Choice Aggregation program in the County of Monterey;
- b. Adopt a resolution approving the revised Joint Powers Agreement establishing the Monterey Bay Community Power (MBCP) Authority with governance structure of two votes on the Policy Board for jurisdictions of population above 100,000, with such resolution to become effective upon adoption of the ordinance; and,
- c. Authorize the Chair of the Board of Supervisors to execute the Joint Powers Agreement on behalf of the County of Monterey.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Introduce, waive reading, and set March 21, 2017 as the date to consider adoption of an ordinance authorizing the implementation of a Community Choice Aggregation program in the County of Monterey;
- b. Adopt a resolution approving the revised Joint Powers Agreement establishing the Monterey Bay Community Power (MBCP) Authority with governance structure of two votes on the Policy Board for jurisdictions of population above 100,000, with such resolution to become effective upon adoption of the ordinance; and,
- c. Authorize the Chair of the Board of Supervisors to execute the Joint Powers Agreement on behalf of the County of Monterey.

### SUMMARY:

Monterey Bay Community Power (MBCP) is a proposed regional Community Choice Aggregation (CCA) initiative for local jurisdictions to form a Joint Powers Agency (JPA) to purchase renewable energy to provide enhanced energy sustainability and lower greenhouse gas emissions. The MBCP proposal includes the Counties of Monterey, Santa Cruz, and San Benito, and the 18 cities within their boundaries.

MBCP project staff has provided participating jurisdictions with a draft Joint Exercise of Powers Agreement (JPA Agreement) and Community Choice Aggregation Ordinance (CCA Ordinance) to present to participating jurisdictions' respective governing boards for consideration. The JPA Agreement presented by the MBCP staff outlines an eleven-member governance structure with one vote per seat on both the Policy Board and the Operations Board respectively. To date, several jurisdictions have adopted the initial JPA Agreement and completed the first reading of the CCA Ordinance. As of the date of this report, four jurisdictions have had a second reading of the ordinance and adopted the ordinance. Per the terms of the JPA Agreement, the Agreement becomes effective and the Monterey Bay Community Power Authority is formed after at least three initial participating jurisdictions execute the Agreement and adopt the ordinance.

Per the direction of the Board of Supervisors on February 14, 2017, County staff has prepared a revised draft JPA Agreement to outline a governance structure that provides two votes on the Policy Board for the County of Monterey, the County of Santa Cruz, and the City of Salinas, the jurisdictions with over 100,000 population. A resolution to adopt the JPA Agreement is attached to the staff report (Attachment A and B, showing the revisions in underline). If the Board adopts the JPA with the two vote structure, then County would not have formed an "agreement" with the jurisdictions that have already adopted the other version of the JPA. For the

MBCP JPA to form with the proposed two vote governance structure, several jurisdictions who have already adopted the initial JPA Agreement would be required to return to their governing boards to amend the MBCP JPA Agreement. If those jurisdictions do not agree to amend the JPA, then the likely effect would be that County would not become a member of the JPA unless the County agrees to the terms of the JPA Agreement.

It is staff's understanding that Board direction to date regarding the two vote governance structure reflects the Board's position that larger jurisdictions will have a larger customer base and will bear a greater portion of the risk; therefore, representation on the Policy Board should be proportional.

It is estimated that MBCP will require a loan of up to \$3 million for start-up costs to implement the initial phases of the project. The final amount of the loan, the allocation of credit risk, and whether credit guarantors will be required to sequester funds are still to be determined. These details will not be confirmed until a point in time after the MBCP JPA has formed. Based on their proposal for a two vote governance structure for larger jurisdictions, the Board of Supervisors has expressed their support for the County of Monterey to provide a credit guarantee for jurisdictions in Monterey County subject to specific reimbursement provisions.

The ordinance requires two readings at the Board. Staff recommends that the Board of Supervisors complete the first reading of the CCA Ordinance (Attachment C), which would allow for a second reading to take place on March 21, 2017. The proposed reading dates ensure that the County complies with the proposed JPA start-up timeline. Per the terms of the resolution to adopt the JPA Agreement, the resolution would not become effective until the Board adopts the ordinance. An option for the Board is to postpone action on the JPA Agreement itself until the same date as final action on the ordinance (March 21). To join the JPA as an early adopter, MBCP project staff has requested that all interested jurisdictions adopt the draft JPA Agreement and CCE Ordinance by the end of March 2017. This timeframe was established to take advantage of favorable power purchase agreements and rate structures.

#### DISCUSSION:

The Monterey Bay Community Power Authority (MBCP) will be composed of jurisdictions within the Monterey, Santa Cruz and San Benito Counties who have passed a resolution to adopt the Joint Power Exercise of Powers Agreement and adopted the required Community Choice Aggregation (CCA) Ordinance. The Authority is set to be formed in April 2017 and will begin providing electrical service to customers in spring 2018. The governing board structure will include a Policy Board composed of elected officials who will provide guidance/approval in the areas of strategic planning and goal setting, passage of Authority budget and customer rates, and large capital expenditures outside the typical power procurement required to provide electrical service. The governing board structure will include a separate Operations Board composed of senior executive staff who will provide oversight and support to the Chief Executive Officer on matters pertaining to the provision of electrical service to customers in the region, focusing on the routine, day-to-day operations of the Agency.

#### **JPA Agreement**

The governance structure outlined in the JPA Agreement as drafted by the MBCP staff reflects an eleven-member governing board, with one vote per seat on both the Policy Board and the Operations Board respectively. Under this governance structure, jurisdictions over 50,000 population will receive one permanent seat, while jurisdictions under 50,000 population would share a rotating seat based on geographical location.

On January 31, 2017, the Board of Supervisors directed staff to return to discussions with participating jurisdictions and to communicate the Board of Supervisors' position supporting a governance structure that provides the County of Monterey with two votes on the proposed JPA Policy Board. On February 10, 2017,

County staff held a meeting with city managers from eight cities in Monterey County. The purpose of the meeting was to express the County's intentions to amend the JPA Agreement to allocate two votes on the Policy Board for jurisdictions over 100,000 population. A consensus was reached among city managers supporting the proposed amendment to the JPA Agreement; however, the Soledad, Seaside, and Marina City Councils have since adopted the JPA Agreement without a two vote governance structure on the Policy Board for larger jurisdictions.

On February 14, 2017, the Board of Supervisors received a report on the status of governance discussions related to the MBCP proposal. Staff was directed to return to the Board on March 7, 2017 for a first reading of the CCE Ordinance and consideration of approval of a JPA Agreement with an eleven-member JPA governance structure that would provide two votes on the Policy Board for the County of Monterey, the County of Santa Cruz, and the City of Salinas. For an illustration of the proposed MBCP governance structure, see Attachment D.

Monterey County staff has revised the JPA Agreement per the Board's direction given on February 14. Under the revised draft JPA Agreement, jurisdictions over 100,000 population would each receive one permanent seat on the JPA governing board, with two votes each on the Policy Board and one vote each on the Operations Board. These jurisdictions include: The County of Monterey, the County of Santa Cruz, and the City of Salinas.

Jurisdictions under 100,000, but above 50,000 population would receive one permanent seat on the JPA governing board and one vote each on the Policy and Operations Board. These jurisdictions include the City of Santa Cruz and the City of Watsonville. Additionally, the County of San Benito will receive one permanent seat and one vote on the Policy and Operations Board in recognition of the large land mass it represents.

The remaining five shared/rotating seats will each receive one vote on the Policy and Operations Boards and will be allocated as follows:

- Peninsula Cities (City of Monterey, Carmel-by-the-Sea, City of Pacific Grove)
- Coastal Cities (City of Marina, City of Seaside, City of Del Rey Oaks)
- Salinas Valley Cities (City of Gonzales, City of Greenfield, King City, and City of Soledad)
- Santa Cruz Small Cities (Scotts Valley and Capitola)
- San Benito County Small Cities (City of San Juan Bautista and City of Hollister)

For the MBCP Authority to be formed with the two vote governance structure outlined above, all jurisdictions (See Attachment E, showing member status) that have adopted the JPA Agreement with the one vote governance structure would need to amend the JPA Agreement.

## **Finance**

It is proposed in the draft JPA Agreement that participating jurisdictions authorize some form of credit support to guarantee a loan for start-up costs. Current estimates of start-up costs could be as high as \$3 million. It is still unclear how the selected banking institution will structure the terms of the loan for start-up capital. It is likely that the banking institution will choose a small number of jurisdictions to provide a credit guarantee.

On February 14, 2017, as a part of their proposal for a two vote governance structure on the Policy Board for larger jurisdictions, the Board expressed general support for a 3-way split between the County of Monterey, the County of Santa Cruz, and the City of Salinas to carry the credit guarantee for participating jurisdictions, subject to specific reimbursement provisions.

The final amount of the loan for start-up costs and terms of the credit guarantee will be confirmed after the JPA selects a lender. This selection is scheduled to occur after the JPA is formed, that is, after the participating

jurisdictions adopt the JPA Agreement and CCE Ordinances. Per the terms of the JPA Agreement, once the County has made a credit guarantee, that guarantee shall remain in place until released, even if the County withdraws from the MBCP JPA.

### **CCA Ordinance**

Public Utilities Code section 366.2(c)(12) enables cities and counties to participate together as group in a community choice aggregation program through a joint powers agency, provided that each participating jurisdiction adopts an ordinance to implement a community choice aggregation program. Each of the jurisdictions which is choosing to participate in the Monterey Bay Community Power Authority must adopt an authorizing ordinance. Accordingly, an ordinance for the Board's consideration, which is in substantially the same form as is being presented to all of the jurisdictions who may participate, is attached as Attachment C. The ordinance must be introduced at one meeting and adopted at a second meeting. If the Board desires to proceed with joining the Authority, the Board should introduce, waive reading, and set the date for consideration of adoption of the ordinance. The resolution adopting the JPA agreement is contingent upon adoption of the ordinance, and that resolution could be adopted at this meeting or at the later meeting at which the ordinance is adopted.

### **Next Steps**

For the County to comply with the proposed MBCP JPA formation deadlines, the timeline proposed by staff is as follows:

- March 21, 2017: Date for BOS to consider adoption of the CCE Ordinance (second reading)
- April, 2017: MBCP Board is seated; MBCP JPA Board to award banking and credit services contract
- 2017 - 2018: MBCP JPA start-up and energy contract procurement
- Spring 2018: MBCP begins supplying power to customers
- Spring 2019: Late adopters eligible to receive power from MBCP.

### **OTHER AGENCY INVOLVEMENT:**

The Auditor-Controller, CAO Budget & Analysis Division, CAO- Intergovernmental and Legislative Affairs Division, and County Counsel have been involved in the MBCP investigation, discussion, and formation of recommendations. County Counsel has approved the CCE ordinance as to form. In addition, staff has had extensive discussion regarding the MBCP proposal with the City of Salinas, other Monterey County cities, and jurisdictions within, and including Santa Cruz County and San Benito County.

### **FINANCING:**

Due to the timing of the requested action, if the Board of Supervisors agrees to proceed with the adoption of the JPA Agreement and CCE Ordinance, the Board will be doing so without full knowledge of the County's final credit guarantee requirements or whether funds will need to be sequestered for the credit guarantee. The exact amount of the loan for start-up costs, the terms of the loan, and Monterey County's portion of the credit guarantee will be determined once the JPA is formed and the selected bank has made a proposal. The total loan amount for start-up costs will be up to \$3 million.

Contingent on all participating jurisdictions adopting the revised JPA Agreement allowing larger jurisdictions two votes each on the Policy Board, the Board of Supervisors has expressed their support to provide a credit guarantee that would be split evenly between the County of Monterey, the County of Santa Cruz, and the City of Salinas. Participating jurisdictions would be subject to specific reimbursement provisions. The County of Monterey's portion of the credit guarantee would equal up to \$1 million. No additional upfront costs or post start-up credit guarantees are required from participating jurisdictions.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Because the MBCP proposal could affect customer utility rates, the economic well-being of Monterey County residents and the Monterey County Organization could be directly impacted. This relates to the Economic Development and Administration Strategic Initiatives. Additionally, the MBCP proposal could increase the use of clean-source energy in Monterey County, promoting sustainability and a healthier environment. This relates to the Infrastructure and Health and Human Services Strategic Initiatives.

Related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: Nicholas E. Chiulos, Assistant County Administrative Officer, 5145

Attachments:

- A: MBCP JPA Resolution (would include JPA Agreement as Exhibit A)
- B: Draft MBCP JPA Agreement (revisions underlined)
- C: CCA Ordinance
- D: Proposed MBCP Governance Organization Chart
- E: MBCP JPA Agreement/CCE Ordinance Adoption Status