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Receive a report on the Monterey Bay Community Power Proposal; receive recommendations of the Alternate Energy and Environment Committee regarding governance and finance provisions; and, provide additional direction to staff as appropriate. (ADDED VIA ADDENDUM)

RECOMMENDATION:

It is recommended that the Board of Supervisors:

a. Receive a report on the Monterey Bay Community Power Proposal;
b. Receive recommendations of the Alternate Energy and Environment Committee regarding governance and finance provisions; and
c. Provide additional direction to staff as appropriate

SUMMARY:

Monterey Bay Community Power (MBCP) is a proposed regional Community Choice Energy (CCE) initiative for local jurisdictions to form a Joint Powers Authority (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 have finalized a draft Joint Exercise of Powers Agreement (JPA Agreement) to go before participating jurisdictions' respective governing boards for consideration. The draft JPA Agreement outlines the proposed governance structure and anticipated financial provisions for the formation of the JPA.

The MBCP JPA governance structure as proposed would be governed by an eleven-member Policy Board and an eleven-member Operations Board, with one vote per seat on both the Policy Board and the Operations Board. Population based voting for decisions of the Policy Board is currently not in the draft JPA Agreement.

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. Staff understands that it is very likely that if Monterey County participates in the JPA, it will be selected along with a small number of the larger jurisdictions to provide an unknown portion of a credit guarantee for start-up costs. 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 March 17, 2017 deadline by which jurisdictions have been asked to take action on the JPA.

Staff is seeking direction to staff from the Board of Supervisors whether to proceed to bring the draft JPA Agreement and Ordinance for consideration of adoption before the March 17, 2017 deadline. It is important to note the following:

- The financial risk to the County will not be known until after the JPA is formed.
- A population-based voting structure on the Policy Board is not included in the current proposal.

Staff is seeking a recommendation from the Board of Supervisors regarding final action on the JPA with the understanding that the financial risk to the County will not be known until after the JPA is formed. Also, with the knowledge that a population-based voting structure on the Policy Board is not include in the current proposal. In order 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 no later than March 17, 2017. This timeframe was established by the MBCP PDAC in order to take advantage of favorable power purchase agreements and rate structures. It should be noted that the County could join as a late adopter and defer by one year. It is not clear what the JPA may require of “late adopter” jurisdictions. From the MBCP organizers perspective, the sense of urgency to form the JPA is driven by the perceived benefit of being able to negotiate favorable energy power purchase agreements during the months of April - October.

Staff presented a Status Report to the Board of Supervisors Alternate Energy and the Environment (AEE) Committee on January 26, 2017. Staff will verbally present the AEE’s recommendations on this matter to the Board of Supervisors at the January 31, 2017 meeting.

DISCUSSION:

California Assembly Bill (AB) 32 and Senate Bill (SB) 32 mandates that state-wide greenhouse gas emissions are reduced to 1990 levels by the year 2020; and 40% below 1990 levels by the year 2030. SB 1078 (amended by SB X1-2) requires that 33% of electricity sales in California be served by renewable energy resources by the year 2020, and 50% by 2030. Local government agencies have been called upon by the State to take action on these initiatives to decrease greenhouse gas emissions throughout the State.

Authorized by California Legislation AB 117 (amended by SB 790), Community Choice Energy (CCE) allows local jurisdictions to form a Joint Powers Authority (JPA) to purchase renewable energy and invest in local energy projects on behalf of residents and businesses. This allows local governments to considerably reduce local greenhouse gas emissions and increase renewable energy production by choosing to procure energy with a higher content of renewables than what is currently offered by PG&E.

Under state law, a CCE is an “opt-out” program, where Monterey Bay Community Power (MBCP) would become the default electricity service provider. Operating CCEs are responsible for procuring energy contracts on behalf of customers, developing local renewable energy infrastructure, and developing energy efficiency programs. Investor Owned Utilities (IOUs) like PG&E continue to provide consolidated billing, customer service, gas service, and power line maintenance.

Successful CCE programs are now operating in the counties of Marin, Sonoma, Lancaster, San Francisco and San Mateo. CCAs are being developed in Silicon Valley, Monterey Bay, Contra Costa County, Alameda County, Humboldt County and other California cities and counties. Beginning in 2013, a region wide collaborative was created to study the formation of MBCP. MBCP is comprised of all 21 local governments within the greater Monterey Bay area, including the Counties of Monterey, Santa Cruz and San Benito, and all 18 cities located within. The purpose of forming MPCP was to explore the feasibility of a regional CCE initiative for local jurisdictions to form a JPA to purchase electric energy on behalf of customers. In order to achieve success, the MBCP JPA must reduce greenhouse gas emissions, provide electric power and other forms of energy to customers, at competitive rates, in the Monterey, Santa Cruz, and San Benito County region. They should reduce energy consumption, stimulate the local economy by developing local jobs, and promote long-term electric rate stability and reliability for the residents of the tri-county area.

Between 2014 and 2016, twenty-six meetings were held by the Project Development Advisory Committee (PDAC), comprised of local government staff and local stakeholders. PDAC meetings allowed participating jurisdictions and stakeholder groups to provide input on the MBCP proposal. In 2014, $404,846 was raised by the Santa Cruz County Project Team to conduct an MBCP Technical Feasibility Study (Attachment A) which analyzed the benefits and risks associated with creating a local CCE program. Based on other operating CCEs, it is estimated that 85% of customers will choose to participate in MBCP. According to the MBCP Technical Study, a higher opt-out rate would reduce sales volumes relative to base case assumptions, and increase the share of fixed costs paid by each customer, while a lower opt-out rate would have the opposite effect. The MBCP Technical Study demonstrates that MBCP would be viable under a broad range of market conditions, indicating potential rate parity or cost savings relative to projected PG&E rates. Actual MBCP customer rates compared to PG&E rates will only be known once the JPA is formed and energy contracts have been established.

In May and June 2016 the Project Development Advisory Committee (PDAC) hosted three special study sessions for county and city elected officials and executive staff for review and discussion of the technical study. Discussion included options regarding governance, start up financing and agency management. In July and August 2016, ad hoc subcommittee meetings were held for executive staff to discuss timing and approach related to governance and finance. The result of this work was the non-binding MBCP Resolution of Intent. This resolution allowed the jurisdictions to affirm their intent to participate in additional governance and financing discussions necessary to form the MBCP JPA by March 2017. The urgency to form the JPA in March 2017 is so that energy contracts can be secured during favorable market conditions and to begin serving customers by spring, 2018. If the Board of Supervisors decided not to join MBCP as an early adopter and defers to a later date, the County would not be eligible to receive power from MBCP until spring, 2019. During this waiting period, unforeseen legislative, regulatory, and energy market conditions could shift, which could produce unforeseeable risks and/or benefits.

On November 1, 2016, the Monterey County Board of Supervisors adopted a non-binding Resolution of Intent to allow the County's continued participation in the formation of the proposed MBCP JPA. A total of 20 jurisdictions have affirmed their intent to participate in additional governance and financing discussions for the proposed MBCP JPA. The Board also directed staff to negotiate a possible population based voting option for specified matters.

On December 14, 2016, staff attended a MBCP ad hoc subcommittee meeting to review and discuss the JPA Agreement and CCE Ordinance and agree upon next steps towards formation of the MBCP JPA. Outcomes from this meeting are as follows:

- In a staff level vote, the majority of participating jurisdictions voted down a voting structure that would have given two votes on the Policy Board for jurisdictions over 100,000 population. (Monterey County, City of Salinas and County of Santa Cruz)
  - The majority of jurisdictions that participated in the vote had under 100,000 population.
- The same staff level vote approved a recommendation that San Benito County be given a permanent seat on the board. This brought the total number of seats to 11 and eliminated an open seat for outside jurisdictions.

On January 13, 2017, staff attended another MBCP ad hoc subcommittee meeting to finalize the draft JPA Agreement, to receive an update on JPA financing, and to review the proposed timeline of the MBCP JPA formation. The draft JPA Agreement has been revised and clarified as a result of the meetings. The current draft JPA Agreement, which reflects the consensus of the majority of the representatives of other jurisdictions who may join, is attached as Attachment B. Under its terms, the Agreement will go into effect and the Monterey Bay Community Power Authority will be formed after the Agreement is executed by at least three jurisdictions. This means that the JPA may come into existence per the terms in the current draft even if Monterey County does not join. Current updates on the MBCP project are as follows:

Governance

The finalized draft JPA Agreement reflects the following governance structure:

- All jurisdictions with 50,000 population or more will have a single seat on the Board, (Santa Cruz County, Monterey County, Salinas, Watsonville and Santa Cruz); additionally, the County of San Benito will have a single seat on the Board
- Santa Cruz County small cities (Scotts Valley and Capitola) will share one seat
- Monterey County small cities will share one seat within each region, jointly appointed by the Mayor's Selection Committee as follows:
  - Peninsula Cities - 1 seat (Monterey, Carmel, Pacific Grove)
  - Coastal Cities - 1 seat (Marina, Sand City, Del Rey Oaks, Seaside)
  - Salinas Valley Cities - 1 seat (Gonzales, Greenfield, King City, Soledad)
- San Benito County small cities (San Juan Bautista and Hollister) will share one seat

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 agency budget and customer rates, and large capital expenditures outside the typical power procurement required to provide electrical service. It will also include a separate Operations Board composed of senior executive staff who will provide oversight and support to the JPA's 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.

Finance
On December 7, 2016, Santa Cruz County, on behalf of MBCP, issued a Request for Proposals (RFP) for credit and banking services (Attachment C). The RFP seeks the following:
- Funding up to $3 million for start-up capital
- Comprehensive banking services for MBCP accounts
- Additional lines of credit for MBCP and medium term fixed loans

According to the RFP for banking and credit services, start-up capital will be required for the following expenditures:
- Consultant fees
- The cost of initial staffing and office space
- Energy services contracting
- Legal Counsel
- Marketing and communications
- Other required elements of CCE program and agency start-up

The RFP for credit and banking services contains a preliminary ten-year operating pro-forma, which outlines the MBCP JPA's forecasted revenues, expenditures, debt services, and additional financial metrics. More accurate fiscal projections will become available once the MBCP JPA has formed and the size of the program is known.

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. Staff has been informed that due to its size and excellent credit rating, Monterey County is likely to be chosen as one of those jurisdictions, which may be required to provide a credit guarantee for JPA start-up costs. It is also possible that the County could be asked to carry a larger credit guarantee on behalf of the cities within

Monterey County. 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, and 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, 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.

As presently drafted in the JPA document, the $3M credit guarantee would be allocated equally among the eleven seats of the Governing Board. In this case, the amount of the credit guarantee for the County of Monterey would be 1/11th of $3M, or $272,727. If, however, the County of Monterey was required to carry the credit guarantee for all Monterey County cities participating in the JPA, the total credit guarantee would rise to $1.36M. No additional upfront costs or post start-up credit guarantees are required from participating jurisdictions.

With the exception of the credit guarantee, the prospective financial risk to MBCP member jurisdictions will be limited to the extent that the draft JPA Agreement creates separation, also referred to as a “firewall”, between the financial assets and obligations of the JPA and those of its individual member jurisdictions. Both Marin Clean Energy and Sonoma Clean Power have effectively employed this approach at the time that each JPA was created, insulating the respective members of each organization from the financial liabilities independently incurred by the MBCP JPA (e.g., power purchase agreements, debt, letters of credit, and other operating expenditures).

A critical factor that bears on the financing for the County are the various significant, unbudgeted expenses from the Chimney Fire, Soberanes Fire, and the severe winter storm damage incurred to date. These expenses were unanticipated and not included in the current budget. Infrastructure projects for immediate attention and mid-term restoration require a total of approximately $9.5 million to address winter storms, to date, plus another $7.5 million to address the deferred repairs following the fires, totaling $17 million in unexpected costs. Unanticipated costs could potentially rise from future winter storm events. This does not include additional unbudgeted costs to the County from other pending issues, which are included in Attachment D.

Exit Fees

When a customer enrolls in a CCE, the Investor Owned Utility (IOU) charges the Power Change Indifference Adjustment (PCIA) fee for their departure from IOU service. The PCIA results in CCE customers paying for a portion of the energy that was procured on their behalf by an IOU prior to the customer joining a CCE. However, participating CCE customers will never use that power. Annually, PG&E proposes PCIA rates, for the following calendar year, by customer class (e.g. Residential; Agricultural, Commercial; Industrial), to the California Public Utilities Commission (CPUC) and requests approval. The PCIA fee is a rate that is directly proportional to the CCE customer’s energy consumption, which shows up as a line item on a customer’s energy bill.

- For example, in 2015, the average single family home located in unincorporated Monterey County consumed an average of 537 kilowatt hours per month. If this customer were enrolled in a CCE in 2015, the average PCIA fee would be approximately $10.60 per month.

The PCIA fee can make it difficult for CCEs to be cost-effective when trying to achieve rate parity with PG&E and other IOUs. The PCIA is especially disproportionate for those customers that are eligible for the low-income CARE (California Alternate Rates for Energy) program, who are required to pay the same PCIA rate that standard residential customers pay.

Customers who join MBCP will have 60 days to opt out of MBCP without penalty. Customers who opt out of MBCP after the initial 60 days could see a minor one-time exit fee, similar to other operating CCE JPAs. Marin Clean Energy charges a one-time $5 (residential) or $25 (commercial) administrative fee to customers who opt out after the first 60 days of service. PG&E currently does not charge a reentry fee to returning customers after opting out of a CCE. Customers who opt out after the first 60 days of service with MBCP will be prohibited by PG&E from returning to MBCP for one year.

Federal Energy Policy Impacts
Concerns have been raised about potential impacts on the MBCP JPA from expected changes in federal energy policies under the Trump Administration. On December 22, 2016, County Federal Lobbyist, Brent Heberlee of Nossaman LLP drafted a memo (Attachment E) to the County outlining the impacts that federal energy policies could have on the development of renewable energy. Nossaman LLP has an agreement with the County to advise on certain legislative matters. The memo emphasizes how state-level incentives, state-binding Renewable Portfolio Standards, and private industry investments will continue to be primary drivers for renewable energy development in California. Federal Investment Tax Credit and Production Tax Credit programs, which incentivize wind and solar production throughout the US, is expected to remain intact until their phase-out over the next five years. Even though the Federal Government is likely to repeal current climate change policies, such as the Clean Power Plan, California is likely to see minor impacts on the renewable energy market.

Next Steps
The timeline proposed by staff for the MBCP project is as follows:
- February 1: Deadline for credit and banking services proposals due to the County of Santa Cruz
- February 14, 2017: Proposed date for the first of two readings of the CCE Ordinance by the Board of Supervisors.
- Week of March 6: Interviews of respondents for credit and banking services RFP
- March 7, 2017: Proposed date for the second reading of the CCE Ordinance by the Board of Supervisors and adoption of the JPA Agreement.
- March 17, 2017: Final deadline to adopt a binding JPA resolution and CCE Ordinance to join MBCP as an early adopter
- Late March, 2017: MBCP JPA formation
- April/May, 2017: MBCP JPA to sign loan agreement with selected bank
- 2017 - 2018: MBCP JPA formation and energy contract procurement
- Spring 2018: MBCP begins supplying power to customers
- Spring 2019: Late adopters eligible to receive power from MBCP

<u>OTHER AGENCY INVOLVEMENT</u>:
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 to the AEE committee. 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.

<u>FINANCING</u>:
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 loan for start-up costs will be up to $3 million.

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Attachments:
Attachment A - MBCP Technical Feasibility Study
Attachment B - Draft MBCP JPA Agreement
Attachment C - RFP for Credit and Banking Services
Attachment D - Countywide Emerging Costs
Attachment E - Memo on Federal Energy Policy Impacts on Renewable Energy