## NOTICE OF PUBLIC REVIEW AND COMMENT PERIOD ON INITIAL CEQA RECOMMENDATION FOR DRAFT POWER PURCHASE AGREEMENT

The staff of the Marin Energy Authority ("MEA") has made an initial recommendation to the Board of Directors that the Board determine at its February 4, 2010 meeting when the draft Power Purchase Agreement is scheduled for final consideration that this Agreement is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Sections 15308 and 15061(b)(3). The MEA has established a public review and comment process for interested persons and members of the public to comment on the initial staff recommendation and whether or to what extent CEQA applies to the draft Power Purchase Agreement. Persons may file written comments by no later than the close of business on January 15, 2010 with the Interim Executive Director, Dawn Weisz.

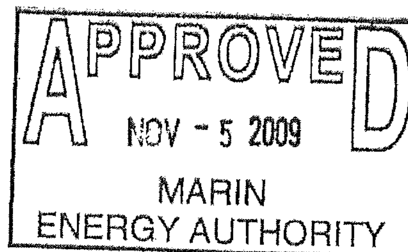
Comments should be sent to the following address:

Marin Energy Authority
3501 Civic Center Drive, Room No. 308
San Rafael, California 94903
Attn: Dawn Weisz, Interim Executive Director

Comments also may be sent electronically to: dweisz@co.marin.ca.us

After receiving any public comments, the Interim Executive Director, in her role as the Environmental Coordinator under the MEA's Environmental Review Guidelines, will forward her preliminary determination to the Board on whether the draft Power Purchase Agreement is exempt from CEQA at least 5 days before the February 4, 2010 meeting. The public will be given an opportunity to speak on this matter before the Board at this meeting. The Board will make the final determination as to whether the Power Purchase Agreement is a "project" as defined by CEQA and whether the preliminary determination by the Interim Executive Director should be approved or some other CEQA action should be taken.

marin energy
authority




November 5, 2009

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Interim Director

RE: Resolution Affirming the Board's Policy that Program Agreement 1 Will Only be Approved if Customer Costs for the Light Green Energy Product Can Be At Or Below PG&E's Projected Cost. (Agenda Item #C-3, revised)

ATTACHMENTS: Resolution

Dear Board Members:

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At the October 1, 2009 meeting of your Board, staff was asked to prepare a resolution affirming the Board's policy decision to set customer costs for the Light Green energy product at or below PG&E's projected costs for customers. The attached resolution is in response to this request and provides that the Board will not approve the draft power purchase agreement (referred to as Program Agreement 1) currently scheduled for approval on February 4, 2010 unless the customer costs for the Light Green energy product can be at or below PG&E's projected costs.

**Recommendation**: Approve resolution.

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RESOLUTION NO. 2009-_______

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN ENERGY AUTHORITY AFFIRMING THAT PROGRAM AGREEMENT 1 WILL ONLY BE APPROVED IF CUSTOMER COSTS FOR THE LIGHT GREEN ENERGY PRODUCT CAN BE AT OR BELOW PG&E'S PROJECTED COSTS.**

**WHEREAS**, the Marin Energy Authority ("MEA") is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MEA members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Fairfax, the City of Mill Valley, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

**WHEREAS**, the MEA Board has conducted an RFP process and a contract negotiation process for power purchase; and

**WHEREAS**, the MEA Board has developed a draft Power Purchase Agreement also known as "Program Agreement 1" with potential energy suppliers; and

**WHEREAS**, MEA technical advisors have determined that responses to the RFP included indicative costs that would allow the Marin Clean Energy program to offer the Light Green energy project at a customer cost that is at or below the projected PG&E customer cost; and

**WHEREAS**, MEA's mission is to provide renewable energy, cost stability and other customer benefits.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of the Marin Energy Authority that MEA will not approve and execute the Power Purchase Agreement known as "Program Agreement 1" with an energy supplier until confirmed pricing can be provided that will allow customer costs to be at or below PG&E project costs.

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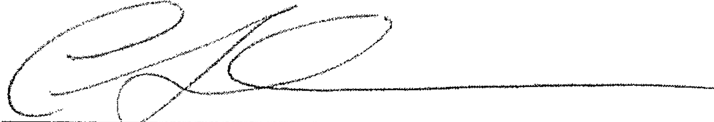
**PASSED AND ADOPTED** at a regular meeting of the Marin Energy Authority Board of Directors on this 5th day of November 2009, by the following vote:

| | AYES | NOES | ABSTAIN | ABSENT |
|---|---|---|---|---|
| City of Belvedere | | | | |
| Town of Fairfax | | | | |
| County of Marin | | | | |
| City of Mill Valley | | | | |
| Town of Ross | | | | |
| Town of San Anselmo | | | | |
| City of San Rafael | | | | |
| City of Sausalito | | | | |
| Town of Tiburon | | | | |



CHAIR, MARIN ENERGY AUTHORITY BOARD

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mrw@mrwassoc.com

November 20, 2009

Marin Manager's Association
Attention: Matthew Hymel, Marin County Administrator
Peggy Curran, Tiburon Town Manager
Debbie Stutsman, San Anselmo Town Manager

Re: Analysis of Service Agreements and Financial Risk to MEA

Dear Mr. Hymel, Ms. Curran, and Ms. Stutsman:

As requested, MRW & Associates, LLC (MRW) reviewed copies of several documents being negotiated by the Marin Energy Authority (MEA) and Shell Energy North America (SENA)[1] related to SENA providing power to MEA for the period from 2010-2015.[2] The purpose of this examination was to identify risks faced by MEA, the member agencies that make up MEA, and the customers that would ultimately receive commodity electricity from MEA.

Based on our review, MRW does not find any fatal flaws with the Agreements. Nonetheless, we find that there are certain issues that would place financial risk[3] on MEA or its customers. We point out these risks and propose some suggested changes to the Agreements for two reasons: (1) so that policymakers can make informed decisions regarding the potential benefits and risks of the CCA (given the current form of the Agreements), and (2) to suggest ways that policymakers might choose to modify the agreements to address these risks.

It is important to understand MRW's scope of work for this assignment. Our review focused on identifying potential risks associated with the CCA program rather than enumerating the benefits of the CCA. MEA, in its Business Plan and other documents, has laid out these potential benefits. Some of these potential benefits include:

- Providing residents and businesses of Marin the opportunity to purchase 100% green power.

[1] MEA has not yet decided that SENA will be the supplier to MEA. However, SENA is in the "first position" and, as a result, MEA and SENA are negotiating the Agreements. In the memorandum, we use SENA and supplier interchangeably.
[2] MEA is considering forming Marin Clean Energy, a Community Choice Aggregation (CCA) program. For simplicity, this memo refers to MEA.
[3] By financial risk we mean the risk that customers would pay more for power than they would have otherwise had they remained with PG&E, or that MEA incur costs greater than its revenues. We note that there is, of course, upside risk—that MEA consistently provides power at a cost less than PG&E, which is MEA's intent.

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- Assisting local governments meet state greenhouse gas reduction compliance requirements.
- Over the long run, potentially providing power at costs comparable to, or less than, PG&E.
- Insulating Marin power users from volatile natural gas and power commodity markets through the use of renewable energy.
- Providing local control over power procurement and ratemaking decisions.

We do not dispute these potential benefits, nor do we attempt to weigh these potential benefits against the potential risks we identify here. Such an analysis is unavoidably subjective and is more appropriately done by local policymakers, who better understand the values and concerns of their constituents. While we make some recommendations regarding possible changes to the Agreements (or potential MEA policies), creative thinkers may also come up with alternatives that address the issues in ways that better meet Marin's policy goals and risk preferences.

## *Approach*

MRW received copies of various draft documents from MEA. The documents (jointly, the Agreements) were[4]:

- Master Power Purchase & Sale Agreement, Edison Electric Institute
- Cover Sheet, Master Power Purchase & Sale Agreement (Cover Sheet)
- Confirmation, Master Power Purchase & Sale Agreement (Confirmation)

The Edison Electric Institute Master Power Purchase & Sale Agreement is an industry standard agreement used in numerous wholesale power transactions (which is what MEA and SENA are negotiating). The proposed Cover Sheet specifies choices regarding options in the Master Power Purchase & Sales Agreement and also establishes other broad changes that define the overall goals and boundaries of the agreement. The Confirmation defines terms and conditions specific to the initial power purchase by MEA from the supplier.[5]

MRW reviewed the draft Agreements in order to understand the services SENA would provide to MEA, the allocation of risks between the two entities, and the risks that the member agencies and MEA's customers would face.[6] MRW also reviewed a presentation by MEA that outlined the key attributes of the Agreements and the goals of MEA.[7]

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[4] MRW is aware of five versions of the Agreements. The first version of the Agreement was provided to MRW by MEA. The second version is found on MEA's website: http://www.marinenergyauthority.org/key.cfm. The third version of the Agreement was a confidential draft developed by SENA and provided to MEA on October 28, 2009. A fourth version was a confidential draft provided to MRW on November 2, 2009. A fifth, the draft final Agreement, was provided via email and is dated November 5, 2009.

[5] As discussed below, MEA will sign other Confirmations with the supplier when MEA makes additional purchases.

[6] MRW cannot provide a legal opinion of the Agreements. Instead, MRW's review was based on our professional judgment and experience.

[7] http://www.marinenergyauthority.org/PDF/MEA_Presentation.pdf.

After completing our initial review of version 1 of the Agreements, MRW held several extensive conversations with representatives of MEA to clarify questions MRW had regarding the Agreements and to understand MEA's perspective regarding specific provisions of the Agreements. Conversations were also held following MRW's review of the third and fifth version of the Agreements.

MRW also requested that MEA perform several *pro forma* financial analyses using MEA's proprietary financial model so that MRW could understand the effect that different assumptions would have on the financial performance of MEA. MRW reviewed the results of these sensitivity analyses.

During the engagement, MRW found MEA staff to be responsive to our requests for information and analysis. MRW also found MEA staff to be willing to address with SENA issues identified by MRW in the draft Agreements. MRW appreciates the difficulty MEA staff faces in trying to negotiate favorable terms and conditions with SENA and to finalize the Agreements while responding to questions and concerns raised by MRW.[8]

## Risks and Issues with the Agreements

MRW's initial review of the Agreements (version 1) identified a number of issues and concerns. Some of these concerns were eliminated by MEA explaining and clarifying the language of the Agreements. Others were explicitly addressed in subsequent drafts of the Agreements. We discuss below the remaining issues with the Agreements that were not clarified by MEA or addressed in subsequent drafts.

1. **Basis Risk from Point of Supply to Point of Delivery.** Under the Agreements, SENA prices its product at the Supply Point ("NP15 EZ GEN HUB"), which is a supply point in the California power market. However, MEA receives the power at the Delivery Point ("PG&E LOAD AGGREGATION POINT"). This means that MEA is responsible for all costs to deliver power from the Supply Point to the Delivery Point. MEA indicates that this risk is mitigated because MEA will receive a *pro rata* amount of Congestion Revenue Rights (CRRs) from PG&E. However, these CRRs are not all applicable to deliveries from MEA's Supply Point to its Delivery Point. MEA also states that it will purchase other CRRs to mitigate the risk of congestion between the Supply Point and Delivery Point. MEA estimates that the congestion costs between the Supply and Delivery points to be $1-$2 per MWh. These costs represent only a few percent of MEA's overall costs. However given that the current wholesale market framework in California has existed only since April 1, 2009, there is relatively little data on the volatility of either CRRs or the price differentials between the proposed Supply and Delivery Points in the Agreement.

[8] In addition, MRW has had prior professional experience with MEA's technical advisors, Navigant Consulting, and its counsel addressing the power agreements, Milbank, Tweed, Hadley & McCloy, LLP, and has found their work to be excellent.

**Recommendation:** While the CRRs that will be allocated to MEA upon CCA formation may be valuable, MRW believes that MEA should focus on providing clean electricity at low, stable prices to its customers and not be distracted by attempting to extract the maximum value out of the CRRs allocated to it by PG&E. Also, unless otherwise specified, CRRs are only valid for one year. Thus, under the current approach, MEA will have to purchase additional CRRs in the future, regardless of the CRRs it receives from PG&E. Given the relatively limited amount of information regarding the volatility of CRRs prices between the Supply and Delivery points, there is some risk that future CRR costs may exceed MEA's estimated costs. Therefore, we recommend that MEA explore the cost of having its supplier price its power at the Delivery Point, rather than having MEA bear the risk of delivery charges between the Supply Point and the Delivery Point. One possible way to do this would be to request pricing from potential suppliers at both the Supply Point and the Delivery Point. With that information, MEA can make an informed choice as to whether the potential revenues gained by retaining and selling unused CRRs plus the future risk of price volatility of CRRs is superior to transferring the allocated CRRs to SENA and having SENA bear the congestion cost risk between the Supply and Delivery Points.

2. **Uncertainty in customer loads.** Under its current schedule, MEA plans to sign the Agreements in early February 2010 for service of its Phase I loads, which MEA characterizes as about 20% of its ultimate potential load. At that time, MEA must either specify the quantity of renewable and non-renewable energy and other services that it will receive from the supplier or establish some other mechanism whereby its Phase I loads are met. This is a concern because if MEA over-procures, then it will have to resell its excess supplies into the market (at unknown prices) and could face significant costs (or gains) from those sales. On the other hand, if MEA under-procures, then it needs to purchase power in the future at unknown rates, which could be higher (or lower) than the fixed prices to be specified in the Agreement in February 2010.

   **Recommendation:** Phase I will consist of the government load of the member agencies plus some unspecified non-governmental load. Given that only around 10% of the Phase I load will be that of the MEA member agencies (which MEA assumes will not opt-out), the uncertainty in Phase I customer load is only slightly less than for Phase II. Nonetheless, MRW recommends that MEA consider ways to address the uncertainty associated with the level of opt outs. MRW suggests three approaches:

   - MEA could require its supplier to provide MEA's entire Phase I load, regardless of the level of opt-outs, at a fixed price. Under this approach, the supplier bears all volume risk rather than MEA having to pre-specify load and facing the risk of under- or over-procuring, as is currently the case in the Agreements;
   - MEA could request fixed pricing for two tranches of energy. The load for the first tranche would be much less than the expected Phase I load and would be specified prior to contract signing. The load for the second tranche would be specified after the end of the opt-out period (when MEA would have a much better idea of its total Phase I load requirements). The Supplier would, in essence, be selling MEA an option to adjust the

quantity of load in the second tranche; and

- MEA could request pricing quotes for different "deadbands" around its expected Phase I load. That is, the supplier would provide all needed power, as long as the actual load fell within the expected load plus or minus some percentage. In this case, only if the usage fell outside of that plus-or-minus band would MEA be responsible for buying or selling the excess power.

With these three pricing options, MEA decision-makers can then weigh the additional cost of having the supplier bear all the risk of load uncertainty versus the cost of MEA bearing a certain amount of the risk of the actual loads deviating significantly from the expected load.

In addition to the issues identified above, there are several outstanding issues in the Confirmation that are less important. These are addressed in Attachment 1.

## *Risks and Issues Facing MEA That Are Independent of the Agreements*

In addition to reviewing the draft Agreements, MRW was also asked to assess, at a high level, any additional risks the MEA CCA might face. Below are MRW's findings.

1. **Uncertainty in PG&E Exit Fees.** Depending upon its ratemaking policies, MEA or MEA's customers may face financial risks due to the level of exit fees they will pay to PG&E. Under base case assumptions, the overall level of exit fees during the five-year term of the Agreements is modest, averaging 0.3¢/kWh.[9] However, if wholesale power prices are significantly (33%) lower than currently forecast (driven down by natural gas prices lower than assumed under MEA's base case), exit fees can increase by nearly an order of magnitude, up to 2.5¢/kWh. At the same time, lower gas/power prices would also reduce PG&E's rates relative to base case assumptions. Since MEA proposes to purchase power from SENA at fixed prices,[10] its costs would not decrease with lower gas/power prices. [11] Thus, under a substantially lower gas/power price scenario, MEA customers could pay between 12%-15% more than the forecasted level of PG&E rates.[12,13] Alternatively, if MEA chose to bear the CRS price risk, it would have to have credit, reserves or hedging mechanisms in place to keep its light green customers' overall electricity rates at or below PG&E's.[14]

   In assessing this risk, the key questions are: "How likely is it that gas and power prices will be below that forecasted by MEA, and for how long would such low prices would persist?"

[9] All cost and rate values presented here are based on pro forma analyses provided to MRW by MEA.
[10] The Phase I agreements reviewed here present a fixed-price product. We assume, consistent with MEA's pro forma analysis, that Phase II would likewise be at a fixed price.
[11] See discussion below regarding MEA costs that are not necessarily fixed.
[12] Percentage based on all-in rate (i.e., includes all applicable PG&E transmission and distribution charges in addition to MEA power charges and PG&E exit fees).
[13] Assumes that MEA does not mitigate CRS risk.
[14] Value based on full, post-Phase II loads.

While a quantitative assessment of power and gas price volatility is beyond the scope of this assignment, power and gas prices assumed in the low price sensitivity case have occurred in the past ten years, and given the historical volatility of the natural gas market, have a finite chance of occurring again in the next five years. Nonetheless, extraordinarily low prices are not likely to persist for multiple years in a row, meaning that a prolonged period—more than a year—of adverse market conditions is remote.

**Recommendation:** MEA, as a market participant, is better suited to mitigate the risk of low gas prices than are individual customers. MRW recommends that MEA explore establishing some form of hedge against high exit fees (i.e., a hedge against very low gas prices) so as to shield MEA customers from this market risk. Such action would also reduce the overall volatility of MEA customers' power prices, which is one of the stated benefits of participation in MEA.

2. **Need to Establish an MEA Departing Load Fee.** MEA's Business Plan assumes that MEA will construct renewable supply sources starting in 2011, with an expected online date of 2014. To undertake this construction program, MEA would issue debt (as is typically the case for other utilities). This effort would allow MEA to increase its level of renewable resources beyond the level assumed in the Agreements and would form the basis for MEA's renewable portfolio after the end of the Agreements. The Agreements allow MEA to undertake such a development program. MEA has indicated to MRW that it would only undertake such a construction program if it appeared to be cost-effective at the time the decision was being made. MRW believes that if MEA adds its own resources then that action has certain consequences: (1) SENA would likely have to liquidate some portion of the resources that it procured for MEA under the Agreements, with MEA customers being responsible for any losses (or benefiting from any gains) resulting from those sales and (2) MEA would have fixed debt service obligations to pay for its renewable resources. If MEA customers choose to leave MEA's service after the end of the opt-out period, then either the departing customers must pay a "Departing Load Fee" to MEA or the electric rates for remaining customers would increase.

   Note that customers choosing not to receive power from MEA during the opt-out period (two months prior to MEA providing power to two months after MEA starts providing power) **would not** be subject to any MEA Departing Load Fee. The is Departing Load Fee would be only applicable to customers who did not opt out during the four month opt-out window and then subsequently, at some later date, chose to take electric service from someone other than MEA.[15]

   **Recommendation:** MEA has indicated to MRW that it expects to establish a Departing Load Fee using an approach consistent with the method used by PG&E. MRW believes that MEA needs to adopt a clear policy stating (1) that it will charge a Departing Load Fee to customers that depart MEA service and (2) how MEA will determine that fee. This is critical in the case

[15] Also note that if an MEA customer returns to PG&E service after the end of the opt-out period, that customer would not continue to pay Exit Fees to PG&E; they would only have to pay Departing Load Fees to MEA.

where MEA owns its own resources.[16] MRW believes that MEA should include this policy in the Implementation Plan that it files with the California Public Utilities Commission (CPUC).

3. **CCA bonding obligation:** CCAs must post a bond that would be sufficient to cover the costs to PG&E of having to unexpectedly serve the former CCA customers in the event of CCA failure. A settlement agreement at the CPUC set forth a complex formula for calculating the required bond level. This formula is recalculated biannually so as to account for prevailing wholesale power market conditions. If the wholesale power market is unusually high (above average retail rates), then the bond amount increases to cover the cost PG&E would incur to serve the returned customers. For MEA, this could be on the order of a few million dollars, which is ten times more than is shown in the MEA budget provided to MRW. However, the high power prices that would cause a high bond requirement would also depress PG&E's exit fee and would also raise PG&E rates, which would in turn likely provide MEA sufficient headroom to handle the higher bonding requirement and keep its customers' overall costs competitive with what they would have paid had they remained with PG&E.

   **Recommendation:** Although MEA might face significantly higher bond requirements than shown in the budget provided to MRW, it would occur in circumstances when MEA should have the ability to cover it without undue financial stress.

## Additional Policy Considerations

1. **Meaning of "Projection" to meet or beat PG&E rate.** MEA has stated that one of the benefits for customers is "Costs at or below PG&E."[17] In discussions with MRW, MEA has clarified that this condition is based on comparing the ***projected*** overall costs of MEA assuming power supply by a third party over the term of the Agreements against MEA's costs assuming power supply was provided by PG&E at MEA's forecast of PG&E's tariffed generation rate. In other words, the following inequality must occur for MEA to sign the Agreements:

   MEA Power Supply Costs + Customer Exit Fees + MEA Overhead $\leq$ PG&E Gen Rate[18]

   Of course, all of the above factors are somewhat uncertain, although MEA Power Supply Costs are less uncertain than the other factors.

   **Recommendation:** MRW is concerned that customers might misinterpret MEA's statements regarding the rates for the Light Green product. To avoid that, MRW recommends that MEA make it very clear that such a commitment is based on reasonable commercial efforts. This

[16] MRW believes that an exit fee policy is needed even if MEA does not develop its own renewable supply options.
[17] MEA presentation, October 2009, p. 12.
[18] MEA Power Supply Costs, Customer Exit Fees, MEA Overheads, and PG&E Gen Rate are all forecasted values in early February 2010.

would provide MEA with the flexibility it may need to meet its other policy goals (e.g., greenhouse gas reductions, greater levels of renewables, local control) even if, in one particular year or another, market pricing turns against MEA, resulting in costs to MEA customers being higher than if they were PG&E customers.

2. **Clarify MEA's rate design policies.** MEA informs MRW that it plans to keep its rate design consistent with PG&E's rate design in MEA's first year of operation. This will simplify comparisons between MEA's rates and PG&E's generation rate. However, MEA has not yet clarified how it plans to design rates after the first year of operation.

   **Recommendation:** MRW believes that clarification regarding rate design policies is needed. This is not to say that it is necessary to restrict MEA's rate design at the present time. However, a policy statement regarding how MEA plans to design rates would provide customers with a better understanding of how their rates might look under MEA and allow for more informed decision-making.

## Points of Information

1. **MEA plans to procure power in two separate transactions: one for power to serve the Phase I load (beginning on or about June 1 2010) and one for power to serve the Phase II load (at a later date no sooner than January 1, 2011).** This means that either prices will differ for Phase I and Phase II customers or Phase I customers will have their rates change at the onset of Phase II. The Agreements being considered in this analysis only pertain to the Phase I load. According to MEA, it intends to negotiate a separate Confirmation agreement[19] with its Phase I supplier when MEA is ready to start Phase II. MEA envisions this negotiation to address primarily price but also "may consider slight revisions to the Confirm for Phase II to the extent our better information (about opt outs, operations streamlining, other lessons learned) requires revision."[20] The pro forma financial analysis provided to MRW shows the Phase II load being served on January 1, 2012, however MEA has said that depending upon market conditions, it intends to remain flexible as to the start date of Phase II, moving it forward or backward by a year (or more) so as to take best advantage of pricing in the power markets. This phase-in approach has both positive and negative aspects.[21] Since power prices are volatile, it is likely that the prices MEA receives from its supplier for Phase II will differ from its pricing for Phase I. If power prices do differ, MEA will need to decide whether it establishes similar rates for all customers or sets rates for its Phase II customers

[19] The Confirmation contains prices, quantities, and other important aspects of the agreement between MEA and its supplier.
[20] Email communication, Elizabeth Rasmussen to Mark Fulmer November 5, 2009.
[21] The positive aspects include simplifying the initial startup of MEA and negotiating a new agreement based on better understanding of opt-out risk. Negative aspects include possibly re-opening issues that were settled in Phase I, seeing wholesale power prices prior to Phase II that do not allow MEA to proceed (because its rates would not meet or beat PG&E's rates at that time) and having to negotiate with a supplier that has great deal of negotiating leverage.

different than for its Phase I customers.[22] **The phase-in approach has both benefits and risks but, on balance, it appears to be a reasonable strategy. MRW recommends that MEA limit the issues in the Confirmation that it revisits when establishing Phase II pricing and consider accepting pricing proposals from alternate suppliers.**

2. **The Agreements depend, in part, on the Scheduling Coordinator Agreement, which is not yet finalized.** The Agreements refer in several places to the Scheduling Coordinator Agreement (SC Agreement). MEA and SENA are just beginning to negotiate the terms of the SC Agreement. MEA believes that it will finalize the SC Agreement in November 2009 and also believes that the SC Agreement will not significantly affect the relative risk allocation in the Agreements. **Until MEA finalizes the SC Agreement, the degree to which costs and risks are ultimately allocated between MEA and SENA is unresolved.**

3. **Although relatively small, some MEA costs are uncertain.** MEA indicates that "Five year energy pricing will be known prior to contract signing."[23] SENA's pricing will include Resource Adequacy, non-renewable energy, RPS-compliant renewable energy, and other renewable energy. SENA's pricing will also cover power scheduling and forecasting services provided by SENA. However, SENA's pricing explicitly does not include ancillary services, net supply costs outside of the pre-determined Balanced Monthly Usage, distribution losses, and any net costs incurred by SENA to unwind positions if MEA decides to bring on its own resources. **In other words, since SENA's price is not all-inclusive, customers should be advised that there are certain costs that are not "known prior to contract signing." However, MRW expects that these "uncertain" costs will be relatively small. Also, MEA has included estimates for costs not included in SENA's price in its financial models.**

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[22] This is exacerbated by the fact that the exit fees charged to CCA customers by PG&E vary depending upon when the customer begins CCA service. If MEA decides to have similar rates for both Phase I and Phase II customers, then the rates for Phase I customers might increase or decrease relative to the rates those customers saw during Phase I.

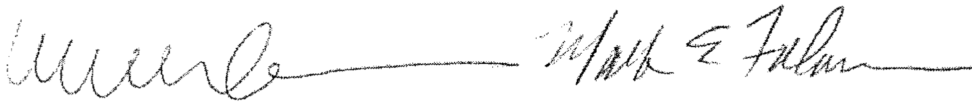
[23] MEA Presentation, October 2009, p. 36.

## Conclusions

Based on our review, MRW does not find any fatal flaws with the Agreements. However, as noted above, there are certain issues that would place financial risk on MEA or its customers that should be addressed by MEA.[24]

Please give us a call at (510) 834-1999 if you have questions about this material.

Best regards,



William A. Monsen and Mark E. Fulmer
Principals

attachment

[24] By financial risk we mean the risk that customers would pay more for power than they would have otherwise had they remained with PG&E. We note that there is, of course, upside risk—that MEA consistently provides power at a cost less than PG&E.

## ATTACHMENT 1

## ADDITIONAL ISSUES IN CONFIRMATION

1. **Open issues in the Confirmation.** In the final draft of the Confirmation dated November 5, 2009, there are three issues that remain open (i.e., they are denoted with [square brackets]). These are (1) definition of CAISO Charges, (2) Definition of "Weighted Average Price", and the final sentence in Section 6 (regarding the party that is responsible for paying transportation charges for unit-specific purchases). The open issues all represent potential costs that will be borne by MEA customers rather than the supplier. The magnitudes of the potential costs are unknown but are likely not so great that they would endanger MEA's viability.

   **Recommendation:** MEA should finalize these three open issues in the following manner:

   - Definition of CAISO Charges: The open issue is whether "Imbalance charges" are included in the definition of CAISO Charges. MRW believes that the supplier should bear these imbalance charges (as is indicated in Appendix 1, section 1(c).) MEA has indicated that the final draft of the Confirmation will not include Imbalance Charges within the definition of CAISO Charges (i.e., the supplier will bear them, not MEA).
   - Definition of Weighted Average Price: The Weighted Average Price is used to determine the price that MEA would pay/receive if it uses more/less energy than allowed under the Agreement. MRW recommends that MEA clearly define how this important factor is calculated. MEA agrees, and has held this issue open awaiting the MEA load profile data necessary to better understand the weighted average price.
   - Responsibility for delivery of energy from unit-specific resources: Section 2.4 states "[For unit-specific Energy delivered hereunder pursuant to Section 2.4, **Buyer shall be liable for all costs associated with delivering Energy from the generation point (the load aggregation point) to the Delivery Point** and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from such generation point to the Delivery Point.]" (emphasis added). MEA indicates that it intends to bear the costs associated with transmitting power from any unit-specific generator approved by MEA to the Delivery Point. Per the discussion in Issue 1, above, MRW believes MEA should request pricing whereby (1) the supplier bear the costs of delivery from the unit-specific resource(s) to the Delivery Point, and (2) the supplier bears the cost of delivery from the unit-specific resource(s) to NP15 EZ Gen Hub, just as it does for all system power being supplied under the Agreements.

2. **Requirement to Supply "Baseline hourly volumes" (Section 5.2):** The Confirmation now includes a new exhibit: Baseline hourly volumes. To date, all volumes have been either monthly or annual volumes. MRW does not understand the need for providing these data, since MRW understands that all purchase obligations are on a monthly or annual basis. MEA indicates that this will be deleted.

**Recommendation:** MRW concurs with MEA that since no other sections of the Agreements reference baseline hourly volumes, this should be deleted.

3. **Commercially Reasonable Efforts (Sections 7.1 and 7.2):** The Confirmation now does not include a provision that the supplier will use "Commercially Reasonable Efforts" to minimize/maximize the costs/revenue associated with under-/over-use of non-renewable energy. The Confirmation states that the supplier will use Commercially Reasonable Efforts if it has to buy/sell additional renewable energy and other services (see Sections 7.3, 7.4, 8.1, and 8.2).

   **Recommendation:** MEA should insist that the supplier use Commercially Reasonable Efforts in the case where it must buy or sell non-renewable energy to meet MEA's loads. MEA concurs and intends to include such language in the final version.

## Marin Energy Authority

**Responses to Current Frequently Asked Questions**

**12-7-09**

**1. Issue: Rate payer risk and bond repayment**

**Response: Ratepayers are not obligated to pay for energy they do not use. Revenue bonds are secured by the sale of the power from the asset.**

The bonds that would be issued for building a new project would be covered by ratepayers in the normal course of business, just as is now the case with the incumbent utility. But to take it a step further, it is actually the revenue from the newly created asset that will secure payback on the bonds. So, for example, if a solar field is built using a bond issuance, the energy being created from that asset is sold to repay the bond over time. In the normal course of business the ratepayers would be covering that debt by paying for the energy generated each month. If MEA failed, however, or ratepayers were not available to cover the cost, then the power would be sold elsewhere and revenue from that sale would cover the bond repayment. Rate payers are only obligated to pay for the electricity they purchase from MEA, and rates will include debt service on any bond issuances as is now the case with the current utility. Under no scenario would ratepayers be obligated to help pay for energy they do not use or to "bail out" MEA in the unlikely event of an organizational default.

**2. Issue: MEA Member General Fund Exposure**

**Response: Cities and Towns do not have any financial liability for MEA debts and liabilities or MCE costs.**

There is a legal firewall between MEA and its member agency general funds that is codified by State law and further codified in the JPA Agreement and the Marin Clean Energy Power Supply Contract. Although cities and towns are members of MEA, it will function as a governmental, non-profit agency whose operations and financial obligations are completely separate from that of its local government members.

In fact, there are multiple layers of protection for member agencies against the debts, liabilities and obligations of the MEA. Under Government Code Section 6507, the MEA is a legal entity separate from its members. Government Code Section 6508.1 authorizes a Joint Powers Agreement to provide that the debts, liabilities and obligations of the Joint Powers Authority shall not be the debts, liabilities or obligations of the individual members of the JPA. The MEA Joint Powers Authority Agreement provides that the debts, liabilities and



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obligations of the MEA shall not be the debts, liabilities and obligations of the members of the MEA.

The final layer of protection is that under the contract with our proposed energy services provider, Shell Energy North America, Shell agrees that its only legal recourse is against the MEA and that will have no legal rights or remedies against the individual JPA members.

**3. Issue: Contract Pricing and Execution**

**Response: Prices for the contract will be refreshed and known prior to contract execution.**

Indicative pricing will be refreshed in late January and early February 2010, just before the MEA Board approves the final contract. Actual prices will be known at the time the contract is executed. Market pricing is the key factor in determining costs for electricity. As stipulated in an MEA Board resolution passed on November 4, 2009, the contract will not be executed until the pricing refresh allows costs to be at or below PG&E's projected costs for the light green option. This is true for both Phase I and Phase II customers.

**4. Issue: Consumer Awareness and Notification**

**Response: MEA's ratepayers will be notified about the shift in energy provider and their cost of electricity 60 days before service begins.**

Customers in member jurisdictions will be notified 60 days before service begins through four opt-out notices and other marketing material. For phase I customers, opt-out notification will begin in March to prepare for service beginning in June.

**5. Issue: Energy Market Volatility**

**Response: The cost of power will be locked in for the term of the five year contract.**

The cost of power will be locked in on the date of contract execution and will include a capped escalation rate that keeps costs at or below PG&E's projected costs.

**6. Issue: MEA and PG&E Costs**

**Response: MEA's costs will be lower than PG&E's projected costs.**

The difference between MEA and PG&E is the difference between a locked in cost and a fluctuating cost. MEA will be locking in costs that start-out at or below PG&E in year one and will remain below PG&E's projected costs in future years. The MEA Board will review its pricing structure annually (and more often



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as necessary) to remain competitive with PG&E rates. It should be noted that in the unlikely event that PG&E's costs drop below their historic threshold, their cost could drop below MEA costs. Conversely, if what market analysis suggests is true and the costs of fossil-based energy and natural gas continue to rise, then PG&E's prices will continue to climb above MEA's projected costs. The good news here is that with MEA, customers will have a choice of energy providers and can choose the lower cost of two options (subject to nominal exit fees) at any time.

**7. Issue: Staff Expertise and Expense**

**MEA has and will hire additional highly qualified professional staff whose costs account for only 3% of the MEA budget.**

MEA has and will continue to draw on the same market expertise that has served many utilities and municipal utilities for several decades. MEA will combine that expertise with reliable technical and legal support under a governmental, not-for profit structure, which has significant economic benefits over that of a private utility, helping keep costs down. Currently, MEA has three staff, three legal firms, multiple technical consultants, and is making full use of expert consultants in the areas of energy modeling and implementation support, transactional and municipal law, infrastructure finance and planning. In the future, MEA's plans call for a staff of 20.5 professionals, which is quite small compared to other municipal utilities and also the incumbent utility.

**8. Issue: Exit Fees and Customer Choice**

**Response: Most PG&E exit fees for customers will be covered by MEA; Customers have the option of switching suppliers at any time**

MEA will cover the projected PG&E "exit fee" for customers that choose to stay with MEA as their energy supplier during the 120-day opt-out period. During that opt out period consumers can make a decision with no exit fee either way. After the opt-out period, both suppliers (i.e. MEA and PG&E) will charge a nominal exit fee for customers that choose to switch between companies. This fee covers the cost of unused power purchased on their behalf and amounts to a few dollars per month on the monthly bill.

**9. Issue: Contract Support and Review**

**Response: The Contract, or Power Supply Agreement (PPA), has been subject to extensive review from industry experts, member agencies and the public.**

The PPA has been reviewed by City and Town Councils, City and Town Attorneys, City Managers, and an extensive cadre of Legal and Technical support for MEA including Navigant Consulting, Nixon-Peabody LLP, Milbank,



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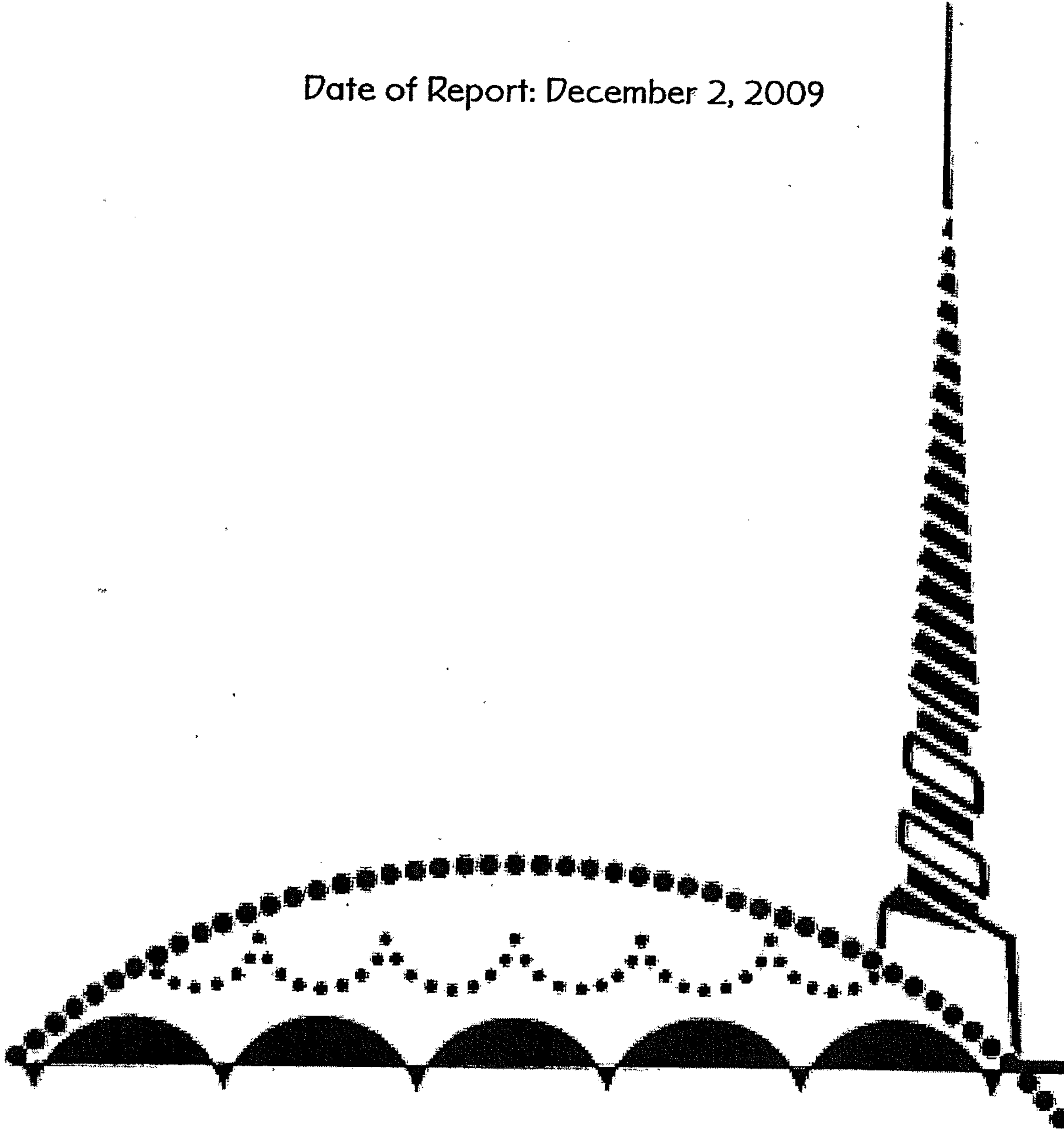
Tweed, Hadley & McCloy LLP, and Richards, Watson & Gershon LLP and members of the public. Also, a peer review of the PPA was conducted on behalf of the City Managers by MRW & Associates, an independent energy consulting firm with years of expertise in this area. The Final Draft PPA was approved by the MEA Board on November 5, 2009 and is now undergoing a 90-day review period. It is then scheduled to be approved by the MEA Board on February 4, 2010. The current draft of the PPA can be found on the MEA website: www.marinenergyauthority.org

*Please stay tuned and check MEA's website often.*
*More answers to FAQ's forthcoming.*

2009-2010 MARIN COUNTY CIVIL GRAND JURY

# Marin Clean Energy: Pull the Plug

Date of Report: December 2, 2009



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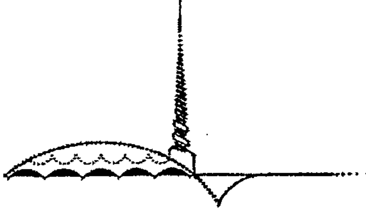

Marin County Civil Grand Jury

# Marin Clean Energy: Pull the Plug

## SUMMARY

Programs to preserve the environment clearly serve the interests of all Marin residents. The Grand Jury strongly supports the goal of achieving greater use of renewable and alternative energy sources as a means of reducing greenhouse gases. The issue explored in this report is not the need for "going green", but rather how to achieve that goal in a manner that can be measured for success. The Grand Jury has concluded that the costs of the Marin Clean Energy (MCE) program remain undefined and the benefits are likely to be minimal. We believe there are alternative approaches that will better serve the community than the unproven and risky one now being proposed by the Marin Energy Authority (MEA).

The MEA, a recently formed Joint Powers Authority (JPA), is proposing the creation of the MCE program. The intent is to provide a higher percentage of electricity from renewable sources than is currently available through Pacific Gas & Electric (PG&E). This energy would be resold to residents, businesses and municipalities in the participating communities. The MEA Board would establish rates and policies and would eventually own and operate commercial power generating facilities. The transmission and distribution of electric power, as well as maintenance and billing, would continue to be performed by PG&E. Natural gas would not be part of this program.

The county and eight municipalities have expressed a tentative willingness to join, while the cities of Corte Madera, Larkspur and Novato have declined. The MEA Board has scheduled a final vote on February 4, 2010 regarding whether to proceed with the proposal. Unless a city council or the Board of Supervisors (BOS) decides to withdraw, that community will automatically be a participant.

According to the 2008 Community Choice Aggregation (CCA) Business Plan, the JPA plans to borrow approximately $6.4 million during its initial year for start-up and working capital. An additional $15.8 million of working capital will be required in subsequent years. The availability and sources of these funds have not been determined. Emphasis will be placed on providing long-term stability by eventually owning and operating renewable energy resources such as geothermal power plants, and wind and solar farms. To achieve this goal MEA plans to borrow an additional $475 million.

The MEA Board of Directors, composed of one elected official from each of the participating jurisdictions, will have responsibility for signing contracts for the purchase of

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power, setting rates for consumers, and overseeing the construction and financing of new generating facilities. MEA projects it will have approximately 100,000 customers who will be paying the costs of this new layer of bureaucracy.

Protecting the environment is in everyone's best interests. We believe there are many pathways to accomplish this, but any solution must be achievable and measurable. More stringent national and state regulations are requiring all energy producers to meet increased carbon neutral standards. PG&E will be required to meet these standards as well. In these economically challenged and difficult times, we question the decision to put the county into the business of operating commercial power generation facilities, a function not usually associated with the government of a small county.

The Grand Jury recommends that the MCE program be abandoned. We strongly urge the county and MEA to step away from their adversarial public posturing and seriously work with PG&E. No matter what has happened before, the time has come to foster cooperation. Efforts and money need to be directed toward forming a public/private partnership that will create an effective clean energy program that will help the county and cities achieve present and future environmental goals.

To PG&E we say, return to the table and work with Marin County. We support the efforts of all communities to work toward a more favorable mix of renewable energy. We also recognize that you have the expertise and the financial strength to be California's leader in protecting the environment. We ask you to partner with Marin to become a model for reducing greenhouse gas (GHG) emissions. It is a mutually beneficial goal.

Citizens of Marin are being led down a costly and extremely risky path not yet traveled by any other community in California. All costs incurred by MCE must be borne by the ratepayers as they are its sole source of revenue. An increment above the cost of power will be added to the ratepayer bill to cover all operating and financing expenses. Finally, MCE could present unforeseen legal and financial risks to the participating cities, the County of Marin, and the citizens as taxpayers. Every dollar expended by MEA must be recovered from the ratepayers. Therefore, it is the Grand Jury's recommendation that the Marin Clean Energy program be abandoned.

## BACKGROUND

The passage of the CCA law in 2002, Assembly Bill 117 (AB117), enabled local governments to assume an active role in managing their electricity supplies through the selection of generation sources, investments in new power facilities, and rate setting. Once formed, a CCA is responsible for providing the energy commodity to its ratepayers. The existing utility provider, PG&E, remains responsible for the delivery, service, and billing of the electrical product as well as the supply of natural gas. To reap the benefits, the CCA will need to plan for financing, development, ownership, and operation of electric generating resources. Since passage of the law, many California communities have

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investigated, researched, and/or attempted to form a CCA. As of the writing of this report, no CCA has yet been created in California.

MEA was formed in December 2008. As stated in the business plan, the county and participating cities would form a partnership to facilitate efforts to reduce greenhouse gas emissions from energy, provide more renewable energy choices, and create price stability. By June of 2009, this Authority counted among its tentative members the County of Marin and the cities of Belvedere, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito and Tiburon. The legislation created clear off-ramps so that communities could withdraw during the study period. To date, Corte Madera, Larkspur and Novato have elected not to pursue membership.

Marin Clean Energy is the CCA program proposed by MEA to buy power directly from a contracted supplier in order to increase the percentage of renewable energy provided to participating customers. Under its current business plan, the MEA would sign a 5-year contract with an independent service provider to supply the energy. At some point, long term financing would be sought to actually begin the purchase and/or construction of renewable energy sources, i.e., wind farms, large-scale solar installations, biomass, and geothermal. According to the proposal, the MCE program would reduce Marin's greenhouse gas emissions, increase price stability, fuel small locally based green businesses, and enable local decision-making over the source, rate, and mix of electrical power used in Marin.

Legislation and executive orders are having a powerful impact on the rapid move toward carbon-neutral production. These mandates will force PG&E and all other energy suppliers to move aggressively toward renewable and carbon-free production. Energy innovation is changing daily. As a result, legislative and regulatory bodies are quickly adopting policies and procedures to take advantage of the latest technology. The most current and important legislative programs to be enacted are:

- California's landmark green legislation was signed three years ago (AB32), requiring the reduction of greenhouse gases to 1990 levels by 2020.

- California's existing Renewable Facilities Program set a goal of having 20% of retail electricity generated from renewable sources by 2010. This program is designed to establish a competitive, self-sustaining renewable energy supply while increasing the near-term quantity of renewable energy generated within California.

- On September 17, 2009, Governor Schwarzenegger signed Executive Order S-21-09, requiring that at least 33% of the state's energy creation and use by 2020 will be from renewable energy. A major purpose for this Order is to assure that utilities will have access to renewable power sources outside of California in order to meet the state's aggressive goals.

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- AB 811 passed in July 2008, allows California cities and counties the ability to offer low-interest loans for energy-efficiency projects and solar panels to homeowners and small businesses. Relieved of high up-front costs, residents would repay the loans through assessments on property tax bills. If the home is sold, the outstanding loan balance is taken over by the new owner.
- Two solar bills were signed into law in California on October 12, 2009. AB 920 requires owners of solar or wind generation systems to be compensated for any surplus energy that they produce. SB32 was passed to encourage solar installations on large commercial spaces such as parking facilities and warehouse rooftops. The Bill requires utility companies to purchase excess solar electricity at a set rate over a twenty-year period.

## METHODOLOGY

Like any new program or project that is in the development stage, MEA is subject to change as new information comes to light. The difficulty for the Grand Jury has been to determine what and when changes have been made. The 2008 CCA Business Plan was produced in April 2008. Since its publication, significant changes have been made. However, the documentation for these changes is absent. The business plan is an outdated document.

The Grand Jury interviewed representatives and staff of the County of Marin, representatives and committee members of the MEA, and members of the Board of Supervisors (BOS). Interviews were also conducted with representatives of several of Marin's municipalities. In addition, interviews were conducted with consultants of the firm that prepared the business plan, as well as independent consultants hired to review that plan. Representatives of PG&E, the California Independent System Operator (CAISO) and the California Public Utilities Commission (CPUC) were also interviewed.

Jurors attended council meetings of municipalities participating in MEA, meetings of the MEA Board and its working committees, and meetings of the BOS. Individuals representing opinions or organizations that support and oppose the proposed CCA also were interviewed.

The Grand Jury reviewed information including budgets, business plans and independent reviews of CCA viability, MEA studies and reports, minutes of MEA , the Board of Supervisors and municipal council meetings, and archived video and Power Point presentations from MEA and the BOS.

CCA programs considered by four other California communities were studied for applicable comparison to the proposed MCE program. A significant body of literature on the formation, risks and benefits of a CCA was also studied. For more detail on the information considered by the Grand Jury, please refer to the bibliography at the end of this report.

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## DISCUSSION

The following discussion is designed to enable Marin's elected officials and the citizens they represent to fully appreciate and understand the scope and implications of the decision they are about to make. Due to the complexity of the issue, most citizens have not taken the time to review the 100+ page business plan or the various alternative options.

The major questions are:

- Do consumers and municipalities understand this complex plan and what it will mean to them?
- How does the opt-out policy work?
- How many households and businesses will opt-out?
- If the opt-out number is large, will the remaining pool of customers be enough to support MEA's fixed expenses?
- Does the MEA Board have the professional expertise to compete in what has been a historically volatile and highly competitive business?
- Does it make sense to create a new level of bureaucracy by putting the county into the power business at a time when core services are being severely reduced?
- Will MCE accomplish the environmental goals outlined by MEA? What will the benefits be and at what cost? Where is the cost benefit analysis?

***Organization of MEA***

MEA is governed by a Board of Directors, composed of one elected representative from each of the participating jurisdictions. The primary duties of the Board are to establish program policies; set rates; provide policy direction to the Executive Director, and determine staffing, and compensation. The day-to-day operations of MCE will be under the direction of an Executive Director to be hired by the Board of Directors.

During the initial stage of the program, most of the operational responsibilities will be performed by the third party electric provider. These will include the technical functions associated with managing electric supplies and retail customer accounts. In the long-term, MEA may choose to have these functions performed by internal staff.

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### *Where Do We Stand Today?*

At this time, the MEA member cities, towns and the BOS, are in a 90-day period to review the contract that has been drafted with Shell Energy of North America, (US) PL. The MEA board is currently scheduled to vote on formation of the MCE program on February 4, 2010. The absence of a vote to withdraw would result in the wholesale transfer of all PG&E customers in those respective jurisdictions to MCE upon contract execution. Transfer of service will follow a phased approach:

- Phase I - municipal, commercial, industrial, and some residential accounts (20% of the customer base) by June 2010;
- Phase II - all remaining commercial and residential accounts (80% of the customer base) by January 2012.

As proposed, all utility customers within the unincorporated area of the County of Marin and the participating cities and towns in the JPA, will automatically have their electricity supplied by MCE instead of PG&E unless they take affirmative action not to participate (opt-out). Regardless of the consumer's election, as owner of the electric transmission and distribution network, PG&E will continue to transmit the electricity to homes and businesses, maintain all physical infrastructure, and process billing.

### *Resource Procurement Strategy:*

In May 2009, MEA issued a Request for Proposal (RFP) for the supply of electric energy. The RFP requested that the bidders provide two fixed prices:

- Light Green with a minimum of 25% renewable energy
- Deep Green with 100 % renewable energy

Of the twelve bidders to the RFP three were deemed acceptable. Shell was selected as the prime candidate. The contract is based on the standard "Master Power Purchase and Sale Agreement" Version 2.1 (4/25/2000) developed by Edison Electric Institute. Although a good basis from which to start, this version of the Master Agreement by no means covers all of the requirements and unique Marin conditions and contingencies that would be involved in the supply of energy from renewable sources. Selected sections have been released, but a complete contract has not been available for a comprehensive review.

The objective of MEA is to provide Light Green energy (25% renewable) to the ratepayer at a price at or below PG&E's generating price. The promised rate to "meet or beat" only applies to year one for Phase I. Firm prices for Phase I will not be known until the completion of the 90-day review period, after the city and town councils have voted on their final participation in the JPA. The price for Phase II residential (80% of the program base) may not be set or known until late 2011 or early 2012. No such guarantee has been

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made for Phase II customers. In making this statement MEA is comparing its probable price to the projected PG&E generating rates. Energy pricing can be very volatile, and use of historical data may not always reflect future rates.

It is purported by MEA that the firm price for Deep Green energy (100% renewable sourced) will be offered at a premium price of 5 to 10% above the Light Green option. It remains speculative how much this will actually be until the contract is executed. Based on information reviewed, the Grand Jury believes this projection to be low.

As of the publication date of this report, MEA has developed a Phase I contract with Shell Energy of North America, in first position as the energy service provider. The Phase I pricing when set in February 2010, is to be for a period of 5 years, starting June 1, 2010. In addition to this contract, the MEA must file an Implementation Plan with the CPUC. It is expected to be filed in December 2009.

MEA estimates that of those customers who do not opt-out of MCE, 80% will elect the Light Green option and 20% will opt for the Deep Green alternative. Although not revealed in available public documents, MEA representatives have stated at public meetings that customers not choosing the Deep Green option will be automatically enrolled in the Light Green option.

### *How Will These Goals Be Achieved?*

The goal of MEA for the first 5-10 years is to provide customers of the Light Green option a rate offering at or below the projected rates of PG&E, and an estimated Deep Green rate at a 5 to 10% premium. The electrical service provider will act as a commodity broker but might not generate the power to fulfill the conditions of the contract. This power will have to be purchased from existing renewable sources. No new sources will necessarily be developed.

MEA plans to acquire and own renewable sourced generation facilities. The objective over the next 20 years is to progressively meet the demand with a mix of solar, wind, biomass, and geothermal power. Assuming that reserves can be accumulated to provide debt service, ownership or part ownership of renewable sourced power is envisioned. The belief is that ownership should help stabilize price volatility and reduce energy price risk. Renewable generation does not require a fossil fuel source.

A key aspect of the business plan is that it will benefit Marin County by bringing new jobs and employment to the local economy. The Marin County General Plan envisions the main population and business centers are to be in the City Centered Corridor along Highway 101. Open space and agricultural are to be concentrated in West Marin. Considering the size and topography of each sector, there is very little opportunity to develop large wind and solar installations. The most feasible power generating installations in the City Centered Corridor would be limited to solar panels on rooftops of businesses, parking facilities and homes. With all of the environmental restrictions in West Marin, it would be

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difficult to imagine any major solar or wind project surviving the environmental review stage. The business plan states that large generation facilities may also be developed or purchased in areas outside of Marin such as Solano and the Altamont Pass. The potential for increased employment and new job opportunities in the county appears to be very limited.

The business plan that was introduced in April 2008 has become a moving target that needs updating. Since that time, some of the assumptions, dates and financials have changed due to new information and decisions. For example, the plan stated that the default plan for customers would be the 100% renewable product, now called Deep Green. As publicly stated in presentations by MEA, the default plan has subsequently been changed to the Light Green product of 25% renewable. The decision to switch default positions reduces revenue while not materially reducing expenses. In addition, the order in which customers will be added to the program was modified, and will have an impact on the timing of revenue and expenses. These adjustments may have been quantified, but they are not reflected in the plan. Presentations given to the participating cities have contained updated projections that differ from the plan.

Financing is another concern. The plan identifies approximately $6.4 million needed for working capital to initiate the program, i.e. purchase the power to bring municipal and commercial customers on line. Traditional costs to be covered include payroll, consultants, contractors, and deposit requirements. The need for credit may increase by $15.8 million to serve Phase II customers. This working capital provides for power purchases and overhead prior to the time MEA develops its own generation facilities. At that time, MEA plans to seek a final round of long-term financing, estimated to be $475 million, in order to support development of renewable generation facilities.

The original "seed" money for the MEA consists of a series of grants and a January, 2009 loan from the Marin County BOS in three distributions totaling $540,000 to date. This loan is to be repaid during the first year of operation. If the MEA does not proceed, it is unclear how the county taxpayers will be repaid. The entity will have no assets or cash flow until the actual delivery of power and the collection of the payments for that power.

If a government entity guarantees, endorses or collateralizes loans to the MEA, there is financial risk to the taxpayers. While there may be some financing alternatives available to the MEA, it would appear that it will have to rely on the credit of, or collateral from, some other entity in order to be deemed "creditworthy". On October 13, 2009, the BOS was advised that it will be asked to provide a guarantee to enable MEA to borrow $2 million. This funding will occur prior to the planned contract execution of February 2010. Total initial credit projections indicate the need for working capital and start-up could exceed $22 million.

Following the start-up of the program, the long-term intent of the MEA is to develop and own renewable generation capabilities. Financing appears to be more feasible since that event would not occur until the program had an established ratepayer base in addition to

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having built up some reserves during the early years of operation. With proven cash flow and the ability to use the developed generation sources as collateral, the MEA would find receptivity in the markets and would probably be able to accomplish long-term financing to build the sources of power and repay the earlier incurred debt. The burden of repayment will be on the ratepayers. This may be reflected in higher monthly utility bills. If financing fails, MEA will be in the business of purchasing power indefinitely.

*Opt-Out Provision*

Once operational, all participating cities and the county will be transferred to the MCE program. As noted by multiple studies, this project is dependent upon the automatic transfer of all customers. The participation level that is critical to success may not be achieved if the consumer is required to opt-in. AB117 allows the nine members of the MEA Board to vote for formation. Consequently, all customers within the participating jurisdictions would automatically be transferred to MCE without customer or voter approval.

A recent *New York Times* article (November 17, 2009) explains that the sign-up rate for alternative renewable programs run by utilities is only about 2%, despite growing public interest. Solar and wind power generally are more costly than power generated by fossil fuels. The article goes on to say that while many people support alternative energy in principle, they personally may not want to spend hundreds of dollars more for electricity, especially in the current economic environment.

The burden of choice, therefore, is placed upon the individual customer. Residents will be required to respond to the MCE opt-out notification if they prefer to stay with PG&E. MCE plans to send out four such notifications over a 120-day period; beginning 60 days prior to automatic transfer. The following attributes of the opt-out provision remain to be addressed in public documents:

- How much will the ratepayers pay in penalties and exit fees if they opt-out after the 120-day period?
- How will ratepayers be notified of the opt-out process and the effective dates of withdrawal?

*Benefits*

MEA sees implementation of the MCE program as the best tool available to achieve significant progress toward its goals. MCE continues to be perceived as the major driving force to reduce greenhouse gas emissions in Marin County. Benefits may include:

- Customer Choice: The cities and county will have the ability to choose different renewable energy levels and benefit from long-term cost competition.

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- Cost Stability: Costs may be locked in through power purchase agreements and owned generation assets.

- Focus on Customer Needs: The MCE program will bring value to customers by setting rates that are tailored to local needs.

- Local Control: Policy direction and rate setting will be the responsibility of the MEA board.

- Greenhouse Gas Reduction: The MCE program will aid in reducing GHG levels and help reduce potential compliance costs of AB32. MCE can help by increasing local consumption of renewable energy.

***Risks***

The business plan explicitly states that a quantitative risk analysis will be included in a future revision or supplement. Two independent reviews of the business plan repeatedly referred to the need for specific areas to be studied in such a review. The Grand Jury has requested the risk analysis on multiple occasions; it has not yet been provided. Consultants have informed the Grand Jury that further analyses of the contract and pricing may be performed immediately before and after contract execution. The specifics of these reviews are not outlined; whether these reviews will cover the depth of risk analysis suggested by peer reviews is unknown.

In an effort to better inform their elected officials, the participating city managers and the County Administrator contracted for an additional review of the service contract. Released by MRW and Associates on November 20, 2009, this report highlights significant risks to MCE customers. The report explores the volatility of energy pricing and encourages MEA to clarify that it may not "meet or beat" PG&E rates going forward. It recommends that MEA develop and publicize their proposed rate structure, identify and address unknown costs in the contract and potential rate discrepancies as Phase II customers are brought on-line. The Grand Jury strongly urges all participants in MEA to review this report and all others available on the MCE website.

The following risks have been identified by the Grand Jury through its research and are categorized as either near-term or long-term. The Grand Jury recognizes that there may be ways to mitigate these risks, but they should be made clear to all involved. With a few exceptions, the risks of MEA are actually risks to the ratepayers who are its sole source of revenue.

*Near-Term Risks*

***The Contract.*** The timing of the contract with a supplier may result in a price that does not meet the commitment of MEA to be at or below PG&E's price. As a result, if the MCE program does not go forward, all costs incurred to date will remain with the county. If the contract does deliver the promised price, then additional ratepayer concerns will be:

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- How do the Deep Green rates compare to the current utility rates?
- How will termination fees be determined in the event MCE customers opt-out?
- How are uncertainties about the number of participants being addressed?
- Will a deposit be required?
- Have all potential costs been delineated in the contract?

***Competitive Action.*** PG&E may take aggressive action to prevent the loss of customers to the MCE program. Such action might include customer outreach; legislative, regulatory and legal challenges, and the introduction of innovative public/private programs. The challenges could significantly impact MCE if ratepayers elect to remain with PG&E. The cost incumbent in combating such competitive action has not been quantified, and could be significant.

***Market Movement.*** Energy costs are subject to volatile changes. MEA, along with all other buyers and sellers, will be subject to market volatility. PG&E may find it possible to ameliorate the effects of volatility as a high percentage of its generation costs have been fully amortized. With the intensity of legislative activity in this area, costs for renewable energy will likely increase with demand; therefore, long-term contracts may not prove advantageous for MEA. The Grand Jury has been told by various sources that the firm price for Deep Green energy (100% renewable sourced) will be offered at a premium cost over Light Green energy. It remains speculative as to how much this premium will be until the actual fixed contract prices are known.

***Credit Availability.*** As already noted elsewhere, MEA will need to borrow money for start up and working capital before selling any electricity or owning any assets. The county has loaned funds thus far which, according to recent MEA presentations, total $540,000. Repayment is expected during the first year. Larger sums will require more formal credit accommodations, which may be available only with some assistance from the county, or one or more cities. On October 13, 2009, county staff informed the BOS that if the program goes forward, MEA may need to request guarantees from the county and participating cities in order to secure credit. It should be noted that even if the cities do not guarantee MEA credit, it is possible that they would be exposed to future legal action.

***Reduced Ratepayer Base.*** The CCA legislation provides that all ratepayers in participating cities and the county will be included in the MEA unless they take specific action to opt-out. Once a contract is signed for a specific amount of power, any reduction in the number of ratepayers will mean the MEA will have excess power that must be sold at the current market price. For this reason the business plan states that a "termination fee" will be charged to those that elect to return to PG&E after the initial opt-out period. Neither the amounts nor the calculation formula has been determined. The composition of the ratepayer base is highly skewed to the small business and residential ratepayers, a significant benefit to MEA. Marin demographics include few large users such as the Marin Municipal Water District (MMWD) that would pose risk if they elect to opt-out and return to PG&E.

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***Legislative and Regulatory Changes.*** The CCA concept has yet to be activated in California. Any start-up assumes risk that the rules may change. In the *New York Times* article previously cited, an example of regulatory risk is illustrated with a Florida Power and Light green power program called "Sunshine Energy". The program was terminated last year by the Florida State Public Service Commission, after an audit discovered that promised solar power facilities were far behind schedule and approximately 76% of homeowners' payments went to administrative and marketing expense instead of providing renewable energy.

***Organization and Staffing.*** The appointed members of the MEA Board have little or no professional experience in the management of an electric utility company. It is essential that the key managers and staff members should, in addition to managerial and leadership abilities, have knowledge and prior experience in the electric utility business. Expertise in the procurement of power, rate setting, load forecasting, planning, risk management, and customer service will be essential. According to the Business Plan, key positions such as the Executive Director, Policy Analyst, and Sales and Marketing Manager were to be hired prior to the completion of the negotiations of the power supply contract(s). At this time, MEA has not identified individuals ready to step into these positions. Significant risk exists if there is a lack of personnel possessing proven track records.

***Long-Term Risks***

The business plan envisions MEA reducing its reliance on a contract from a single supplier by purchasing or constructing facilities to produce renewable energy. Any look into the future must include the possibility that this industry will be substantially different. Some of the short-term risks remain, and some additional considerations are apparent.

***Technology Change.*** New technology will almost certainly alter the energy markets. More efficient solar and wind driven energy production is under development. Tidal and other concepts may be perfected. Tools, such as smart meters that focus on managing the demand side for energy, are already being implemented. This rapidly changing landscape calls for experienced and highly qualified experts to monitor and anticipate changes. For example, such an undertaking as purchasing or building a large scale production facility that is less than state-of-the-art would pose far-reaching consequences for MEA. Failure to anticipate large-scale changes in technology or markets could be devastating.

***Market Dynamics.*** As in the near-term, the demand for renewable energy may cause market disruption. Compliance requirements to increase renewable content could drive major suppliers to buy up large segments of the market either by contracting for power or outright purchase of sources. MCE may find it challenging to get into this market and meet the 100% Deep Green option. It should also be recognized that the supply and procurement of renewable sourced energy requires special attention. The energy production profiles of solar and wind sourced generation are quite different from those of the conventional sourced generation. The production curve of solar, for example, is not a flat production curve even during full sunny days. The production could vary as much as

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20 to 30% in a day due to atmospheric conditions. Similarly, wind sourced generation can vary during the day due to variations in wind speed, wind direction and ambient temperature. Consequently the MCE 100% Deep Green plan could be flawed because large hydroelectric, nuclear, and gas-fired generating capacity may be part of the power mix during certain times. Since solar and wind cannot be provided 24 hours a day, MCE would have to purchase Renewable Energy Credits (RECS) to off-set these non-renewable power sources.

***Construction Feasibility.*** Current interest rates and construction costs are low due to a slow market. That could change before the MEA is in a position to take advantage of favorable market conditions. Environmental, neighborhood forces and litigation may delay or prevent the approval process and require that production facilities be located far from Marin County, thereby eliminating many of the benefits of local employment and local control.

***Execution Risk and Accountability.*** The short and long-term plan for MEA is dependent on the ability to keep abreast of a series of moving targets. The elected officials who will comprise the Board of Directors will need to find highly qualified staff to run MCE on a day-to-day basis. Identification, compensation, and retention will be major elements in staffing MCE. A hiring mistake or a poor business decision will cost both ratepayers and politicians. MCE will not be a primary concern for the Board as the members are elected to govern other local entities. This is not to say that they will not be diligent, but it does say that their already busy schedules will become busier. The design and concept of a CCA does not provide much transparency for either the ratepayers or the voters (taxpayers) to determine accountability for the successes or failures of MCE.

***It's All About the Ratepayers***

The business plan and presentations have emphasized that the cities and county will have no liability for debts incurred by the MEA. However, the ratepayers will. All of the following expenditures will be added to the ratepayer's bill:

- Salaries and benefits
- Consultants and legal costs
- Marketing and servicing
- Contract revision costs
- Interest and amortization expense for debt
- Bonding obligation
- Customer exit fees
- All other overhead

In addition, in a slow-growth county such as Marin, the number of ratepayers will not grow significantly, and no one really knows how many will choose to opt-out. Coupled with a continued emphasis on energy efficiency, conservation, and the expansion of solar facilities, a scenario similar to what was recently experienced by the MMWD can be

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envisioned. Successful conservation efforts reduced the demand for water, yet rates were increased to cover the built-in overhead costs. Demand for electricity may fall if more and more customers install solar and conserve through smart meters. However, the fixed costs of MCE, which include costs for salaries, benefits and debt service, are likely to remain static or increase. For example, the interest cost alone on the $475 million is $19 million per year at a 4% interest rate. Again, the ratepayers will be the only source of revenue for MCE.

Claims by MCE and PG&E as to the reductions of GHG are difficult to reconcile. A primary cause for the difficulty is that the definitions of qualifying renewable energy do not include nuclear or large hydroelectric plants, neither of which, once constructed, contributes to GHG. When these sources are included, along with solar and wind, the emission-free content of PG&E generation is already in excess of 50%. In contrast, the emission-free content of MCE for the first year will be close to 25% for an estimated 20% of their ratepayers. At the outset MCE renewable energy will not be new, but purchased from existing sources. No net reductions of GHG will occur until new production comes on line either from their supplier or through the purchase or construction of new facilities.

*Other Approaches*

Proponents of MCE have attempted to convince planners and elected officials that the purchase of renewable energy will lessen the need for the difficult task of addressing energy efficiency and the impacts of transportation. The Grand Jury finds that the degree of commitment to MCE has distracted from efforts to reduce the carbon diet of Marin residents. Communities throughout California are aggressively and creatively exploring programs to meet the goal of greenhouse gas reduction. The Grand Jury found innovative and targeted efforts directed at a wide range of improved methods of energy consumption. These include:

- ***Expand cleaner transportation options:*** 62% of Marin's GHG emissions come from gasoline-powered vehicles. Addressing this issue calls for trip reduction; increased use and availability of public transportation; bicycling; electric and plug-in hybrid vehicles; a shift to alternative fuel vehicles; alternative fuel infrastructure.

- ***Improve building efficiency:*** Support and promote existing green building standards and programs for residential, commercial, industrial, and governmental structures, and conduct energy audits and require energy efficiency efforts for buildings.

- ***Increase community resource efficiency and reuse:*** Encourage efficient water use and reuse efforts; promote waste recycling and energy generation; support efficient public and private land use strategies.

- ***Grow renewable energy use:*** Provide financial incentives, regulatory streamlining, and related efforts to promote rooftop solar systems; support utility shifts to renewable energy sources; support legislative efforts to reach renewable goals.

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- ***Transform business products and practices:*** Encourage private sector efforts to move to new green product lines in established industries; shift to new materials and more efficient technology.

- ***Energy infrastructure:*** Encourage efforts to build a smart grid, which is a combination of transmission lines and information networks that allows for seamless integration of distributed, renewable sources of electricity, provide better information about usage and pricing (via "smart metering") that can improve energy efficiency.

The efforts described above approach goals in a realistic order. Transportation is the major contributor to GHG emissions in Marin. Energy efficiency is also ranked high. Eliminating the need, or reducing the demand for energy, equates to a savings of never having to produce the energy in the first place. Sonoma and Berkeley, two equally environmentally conscious communities, have already implemented other less costly and risky alternatives to achieve reductions in GHG emissions.

The Grand Jury notes the efforts of the City of Berkeley as a forerunner in the development of local energy efficiency management. The County of Sonoma and the Silicon Valley Joint Venture have engaged in equally aggressive planning, and have seriously targeted cleaner transportation. Most of these communities include all of the above options and have some form of partnership with PG&E. They have moved ahead without forming new bureaucracies. We found little evidence that either MEA or MCE has fully or seriously explored alternatives, including the partnerships offered by PG&E

In addition, the Grand Jury did find evidence of PG&E's willingness to work with county departments through a variety of cooperative relationships to support green energy and to create the basic components of the MCE program without the above-described risk to ratepayers and taxpayers. That offer was followed by a detailed proposal presented to county staff and the Board of Supervisors in November 2008. At that meeting, the board voted to discontinue pursuing efforts with PG&E and approved the formation of MEA

## FINDINGS

F1. The formation of the Marin Clean Energy Community Choice Aggregation creates a new level of government while the county and local communities are experiencing reductions in basic municipal services.

F2. The Marin Energy Authority is not required to submit the Marin Clean Energy program to a vote of the public; although legal, this process runs contrary to transparent governance and consumer protection standards.

F3. Unless a participating city, town or the County of Marin votes to withdraw from the Marin Energy Authority, residential and business customers will be transferred to the Marin Clean Energy program.

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F4. The opt-out option means that all consumers in the participating jurisdictions will automatically become subscribers to the new Marin Clean Energy program, unless they decide to take affirmative action not to participate.

F5. Neither the Board of Supervisors nor the Marin Energy Authority has fully explored or tried to negotiate partnerships offered by PG&E.

F6. The 2008 Community Choice Aggregation Business Plan is outdated and lacks sufficient detail, including current pro-forma data, updated market analysis, load projections, customer exit fees and the specified quantitative risk analysis.

F7. The construction of owned facilities is a requirement for the success of the Marin Clean Energy program. Due to community resistance and planning constraints, it is highly unlikely that the Marin Energy Authority will succeed with local construction of sufficient large-scale renewable energy sources within Marin County.

F8. Neighboring communities have successfully implemented a wide variety of efforts to target energy efficiency and greenhouse gas reduction within their communities through partnerships with local agencies, foundations and PG&E.

F9. The degree of commitment to Marin Clean Energy has distracted local agencies from the pursuit of the wide range of other options available to reduce greenhouse gas emissions.

F10. The risks of this venture are far too great to ignore in spite of repeated assurances from the Marin Energy Authority. Multiple reviews have identified significant ratepayer risks.

F11. The service contract recently approved by the Marin Energy Authority Board is incomplete and only covers Phase I and excludes pricing.

F12. The actual rates Marin Clean Energy will charge the majority of its customers, most of whom are residential, may not be known until late 2011 or early 2012.

F13. The Grand Jury finds that most monies spent to date have been for professional services of attorneys, consultants and outside peer reviews. The Grand Jury believes that these expenses are indicative of the highly complex nature of this undertaking.

F14. Placing this complex, expensive and volatile business venture in the hands of rotating city/county elected officials charged with other obligations, presents the Marin taxpayers with an unacceptable risk.

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## RECOMMENDATIONS

The Grand Jury recommends:

R1. That the Marin Clean Energy program be abandoned.

R2. That the county and all participating municipalities of Marin Energy Authority should step away from their adversarial public posturing and seriously work with foundations, federal, state and local agencies and PG&E to foster cooperation. Moreover, rather than create a costly and very risky new county bureaucracy, efforts and resources should go forward to form public/private partnerships that will enable the county and all of the cities to achieve their present and future environmental goals

R3. That in the event the Marin Clean Energy program is not abandoned, the Board of Supervisors and all participating municipalities review all available documentations and demonstrate their confidence, understanding and commitment to this project by voting at a publicly noticed meeting prior to committing their respective jurisdictions to final membership.

R4. That the full contract, including all terms, conditions, and pricing be provided to all parties prior to the final opportunity to withdraw.

## REQUESTS FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing bodies:

- Marin County Board of Supervisors: **All Findings and Recommendations 1, 2, & 3**
- The city and town councils of Belvedere, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito and Tiburon: **All Findings and Recommendations 1, 2 & 3**
- The Marin Energy Authority Board of Directors: **All Findings and Recommendations 1, 2 & 4**

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M.

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Brown Act requires that any action of a public entity governing board occur only at a noticed public meeting.

### Disclaimer

This report was voted on and approved by the Grand Jury with the exception of one member who abstained from final deliberations and voting because of ownership of publicly traded stock in one of the companies mentioned in this report.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of the Penal Code 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

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California Solar Initiative: www.californiasolarstatistics.ca.gov
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## Glossary

| | |
|---|---|
| **AB 32** | Assembly Bill 32 (2006), the California Global Warming Solutions Act |
| **AB 117** | Assembly Bill 117 (2002), the Community Choice Aggregation Law |
| **AB 560** | Assembly Bill 560 (proposed), would increase the cap on "net metering" from 2.5% of peak demand in the utility's system to 10% (net metering gives solar customers credit on electric bill for surplus they transfer to the utility) |
| **AB 811** | Assembly Bill 811, allows land-secured loans for homeowners and businesses that install energy-efficiency projects and clean-energy generation systems to be paid back through assessments on individual property tax bills. |

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**AB 920** Assembly Bill 920, requires utilities to pay for credits on any electricity left over at the end of the year (at present leftover credits are zeroed out at the end of the year)

**Berkeley FIRST:** Financing Initiative for Renewable and Solar Technology: Berkeley FIRST is a solar financing program operating in the City of Berkeley which provides property owners an opportunity to borrow from the City's Sustainable Energy Financing District to install solar photovoltaic electric systems and allow the cost to be repaid over 20 years through an annual special tax on their property tax bill. http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=26580

**Berkeley Solar America:** Through its Solar America Cities partnership with the Department of Energy, Berkeley's goal is to develop a "turn-key" solar installation program in its municipality. The city also plans to increase local capacity for solar energy installations by working with local suppliers, installers, trade associations, and financiers.

**Biomass Energy**: Energy generated from plants and plant-derived materials such as trees, agricultural products, and other living plant materials.

**CAISO** **California Independent System Operator:** Agency charged with operating the majority of California's high voltage wholesale power grid.

**CCA** Community Choice Aggregation enables local governments to assume an active role in managing electricity supplies, investing in new power facilities and setting rates.

**CEC** California Energy Commission, State energy policy and planning agency.

**CPUC** California Public Utility Commission

**CSI** California Solar Initiative

**CTC** Competition Transition Charge

**ESP** Energy Service Provider

**Geothermal energy**: Energy generated from the heat of the earth usually from geothermal water, steam, or other hot fluids brought up to the surface from wells.

**GHG** Greenhouse Gas emissions, any of the atmospheric gases that contribute to the greenhouse effect by absorbing infrared radiation produced by solar warming of the Earth's surface. They include carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide $NO_2$), and water vapor.

**IOU** Independent Owned Utility

**IPP** Independent Power Producer

**JPA** Joint Powers Agreement

**KW** Kilowatt, unit of electric power output or consumption.

**KWh** Kilowatt hour, unit of electric generation or consumption measure during one hour. The average annual energy consumption of a household in the United States is about 8,900 KWh

**LARS** Local Area Reliability Service

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**Marin Climate and Energy Partnership:** A group of representatives from all Marin municipalities, Marin County, the Marin Municipal Water District and the Transportation Authority of Marin to assist municipalities assess, prioritize and implement greenhouse gas (GHG) reduction activities in their greenhouse gas reduction programs.

**Marin Clean Energy Initiative - MCE:** A program initiated by MEA calls for MEA to compete with PG&E as retailer of electricity to Marin customers in order to boost usage of renewable energy

**Marin Energy Authority – MEA:** A JPA established in 2008 and made up of Marin County and 8 cities and towns

**MW** Megawatt, equivalent to 1000 KW

**MWh** Megawatt hour, equivalent to 1000 KWh

**NCPA** Northern California Power Agency

**PG&E** Pacific Gas and Electric

**PPP** Public Purpose Program, energy efficiency program that provides rebates for energy efficiency

**RAR** Resource Adequacy Requirements, requirements by CAISO to (a) establish appropriate levels of reserve margins, and (b) ensure adequate resources are committed to the region

**Renewable Resources:** Power generated from resources that can be replenished.

**Eligible Renewable Resources:** Renewable resources meeting specific requirements as determined by the California Energy Commission. To qualify a generation must use one or more of the following renewable resources: biodiesel, biomass, fuel cells, geothermal, landfill gas, ocean wave, ocean thermal, tidal currents, photovoltaic solar, thermal solar, small hydroelectric (30 megawatts or less), wind.

**RFP** Request for Proposal

**San Rafael BERST:** Green Building, Energy Retrofit and Solar Transformation Collaboration. The Marin Green BERST collaborative was recently initiated by San Rafael as an effort to study and pursue policy and model program options for green building regulations and energy efficiency retrofitting for existing buildings.

**SB 32** California Senate Bill 32, increases the size of generation facilities eligible for California's feed-in tariff program from 1.5 megawatts (MW) to 3 MW, increases the statewide cap from 500 MW to 750 MW, and expands the program to include municipal utilities.

**SCEIP** The Sonoma County Energy Independence Program, Sonoma County's Energy Independence Program is a new opportunity for property owners to finance energy efficiency, water efficiency and renewable energy improvements through a voluntary assessment. www.sonomacountyenergy.org.

**SJVPA** San Joaquin Valley Power Authority

**Smart Grid:** Using wireless technology to improve the ability to analyze the grid and manage power transmission and delivery of electricity in the most efficient manner.

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**Smart Meter:** A wireless electric meter that identifies consumption in more detail than a conventional meter and transmits that information to the local utility for monitoring and billing purposes.

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marin energy authority

DAWN WEISZ
*Interim Director*

**PRELIMINARY RESPONSE TO
GRAND JURY REPORT
Dated December 2, 2009**

**Prepared by the Board of Directors of the Marin Energy Authority
As Noticed In Special Session
December 7, 2009**

**[At the January 7, 2010 regular meeting of the Marin Energy Authority Board of Directors, the Board will finalize this Preliminary Response as its formal response to the Grand Jury report.]**

TOM CROMWELL
*City of Belvedere*

LEW TREMAINE
*Town of Fairfax*

CHARLES MCGLASHAN
*County of Marin*

SHAWN MARSHALL
*City of Mill Valley*

CHRISTOPHER MARTIN
*Town of Ross*

BARBARA THORNTON
*Town of San Anselmo*

DAMON CONNOLLY
*City of San Rafael*

JONATHAN LEONE
*City of Sausalito*

RICHARD COLLINS
*Town of Tiburon*

F1: Partially Disagree.

The Marin Energy Authority (MEA) is a new government agency, but is not a 'new level of government', and is to be financed with ratepayer revenues that do not cost the member agencies or MEA any general funds. The implied argument that general funds are at risk is patently false.

F2: Disagree.

MEA, per the enabling legislative statute (AB117), does not submit its Marin Clean Energy (MCE) program to a direct vote of the public on the program itself in advance of the program's implementation. The representative vote is through the publicly elected representatives who serve on the MEA Board. Furthermore, the MCE program has been submitted to a vote of the public's elected representatives in their constituent cities, towns and in the county.

Via the extensive hearing process used to evaluate risks and opportunities from the Marin Clean Energy Program, the standards of transparency and consumer protection have and will be honored and preserved. In addition, information about the MCE program will be provided to every ratepayer (homes and/or businesses with an electricity bill), using 4 notices of their individual right to vote themselves out of the program. Extensive information on MEA, MCE, energy products, and ratepayer rights will be provided to each residence and business in the service area during this period of time. All documentation has been available to the public on a 24 hour basis on the agency's website, www.marinenergyauthority.org.

The voting public has been participating in the process through dozens of public meetings, and ratepayers have the additional opt-out opportunities provided during the official opt-out period. This process will occur over the first 90 days of the program launch, so there are 4 opportunities to vote for each ratepayer. Once enrolled in the MCE program the ratepayer can still opt out at any time, but there is a possibility they will pay a nominal exit fee to the agency to cover any stranded costs of prior energy procurement made on their behalf.

california
AB 32

F3: Agree.

Only the cities that did not join MEA have denied their ratepayers the opportunity to vote on whether to participate in the program (via the opt-out procedure).

Marin
Clean
Energy

This is a preliminary response by the MEA Board to the Grand Jury report dated December 2, 2009. The purpose of this response is to immediately address the findings and recommendations in the report and clarify some misperception and rectify some of the misinformation contained in that report. A final and Formal Response will be approved by the MEA Board at their next regularly scheduled meeting on January 7, 2010 and released to the public on January 8, 2010.

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With respect to cities that do not opt-out, their residential and commercial customers will be transferred to the MCE program, at which point they will have 4 ballots to vote themselves out if they choose. Only cities that remain in the agency allow their ratepayers this choice.

F4: Agree.

See item F2 and F3 above.

F5: Disagree.

The Board of Supervisors as well as the staff and Chair of MEA have held numerous meetings with PG&E over the last four years to explore and determine whether PG&E could or would offer programs to 1. decrease greenhouse gas emissions on a level comparable to that offered by the MCE program, 2. increase focus on energy efficiency programs in Marin County, and 3. offer special partnership programs to help Marin meet its AB 32 obligations and internally, locally established goals. No substantive proposal was ever submitted to the Marin County Board of Supervisors or to the staff, Chair or Board of Directors of MEA.

PG&E stated that they would only partner with the County and other jurisdictions if the jurisdictions left the MCE program, and if there was no Request for Proposals (RFP) process. PG&E refused to participate if they were required to compete with other bidders. Discussions with MEA were terminated by PG&E in April, 2009.

F6: Disagree.

The Business Plan is an extremely detailed document, prepared in cooperation with energy industry experts. The Business Plan underwent two independent peer reviews. Both peer reviews found the plan to be comprehensive and containing no fatal flaws. In addition, the draft Implementation Plan, dated November 18, 2009, was made available to the Grand Jury as requested and provides an even higher level of specificity and detail, as it is more current. The Grand Jury's Report does not make reference to the detailed information contained in the draft Implementation Plan, approved by the MEA Board on December 3, and submitted to the CPUC on December 4. The Implementation Plan is, in effect, an update to the Business Plan.

F7: Disagree.

The MCE Business Plan does not state that the construction of owned assets is a requirement for the success of the Marin Clean Energy program. While potentially advantageous, it is neither necessary for "owned" facilities to be used for program success, nor is it "highly unlikely" that MEA will be able to successfully locate and support projects within Marin County to meet its local generation goals. Distributed generation, for example, has tremendous potential in Marin County, and is a stated goal of the program.

Future energy sources could be developed by private companies which sell to MEA, by joint projects between MEA, other governments and private companies, or via public financings by MEA. Each specific project proposal will be analyzed for economic feasibility, land use issues, and environmental impacts at the appropriate time in the future. With a potential renewable energy source capability over five times the size of maximum electricity demand within the borders of Marin County, MEA is confident that some projects will be located in Marin over time. Others will benefit our entire North Bay economy.



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F8: Partially Disagree.

While neighboring communities have launched successful programs, the quantity of greenhouse gas reduction projected by MEA is over 50 times greater with MCE than by using all other programs combined, including the implementation of a Solar and Energy Efficiency District (SEED) Program in Marin (using AB 811 property-based financing mechanism), and all other locally based energy efficiency and renewable energy initiatives.

The major obstacle with all the other possible greenhouse gas reduction initiatives is that they require General Fund monies. Only the MCE program offers non-General Fund revenue to support efficiency and renewable energy programs at no cost increase to the ratepayer. The costs to all jurisdictions to address AB32 goals are projected to be $394 million (California Air Resources Board data), and the establishment of MCE avoids 2/3 of that cost.

F9: Disagree.

There has been no slowdown in implementation of County energy efficiency programs (quite the opposite), nor has there been a slowdown of CREBs and other energy programs within the Marin communities; and MEA staff has applied for multiple federal, state, and local grants for renewable energy and energy efficiency projects, all while exploring the feasibility of the MCE program. MEA is not a distraction but the most significant tool for local agencies to employ as the costs and challenges of meeting AB 32 requirements are considered. In fact, the investigation and analysis of CCA within Marin has been a complimentary process in developing these other energy programs that may reduce greenhouse gas emissions. A significant portion of the analysis completed throughout CCA investigation has informed discussion and analysis focused on other complimentary energy programs and has heightened Marin's overall analysis to climate mitigation, greenhouse gas emissions reductions and renewable energy promotion.

F10: Partially Disagree.

There are risks associated with any new venture, but MEA staff and board members have identified and worked to mitigate all major rate payer risks and all risks to member jurisdictions. The remaining risk is that at sometime during MCE program operation, a ratepayer may identify an opportunity to purchase cheaper electricity (with less renewable energy content) by transferring generation service back to the incumbent utility. While this circumstance is not anticipated, Marin residents will be afforded a choice with respect to electric generation service and may base their service preference on any factor (such as price and/or renewable energy content), they so choose. If ratepayers so desire, they may, at any time, opt out of MCE (but may have to pay a nominal exit fee in the event of certain market conditions, similar to that charged by PG&E).

F11: Disagree.

The Contract elements are complete for both Phase I and Phase II ratepayers. Pricing methodology is stated and understood, based on indicative bids submitted in July, and will be finalized prior to contract execution by the Executive Director and Chair of MEA in the Spring of 2010 and again in early 2011 for Phase II. It is not possible for anyone, including PG&E, to know in advance of the execution of any power supply contract, what the price of energy will be on any given day because of the nature of the business of energy supply.

MEA's default position is that its costs of its energy in Phase I and Phase II must be "at or below PG&E's projected costs", or there will be no executed contract. The MEA Board passed a resolution at its November 4th meeting assuring that MEA will NOT execute the contract unless

Light Green Customers' (who will enjoy a minimum of 25% qualifying renewable energy content as compared to the 15% provided by PG&E) costs are at or below PG&E's projected costs. It is worth noting that California's current Renewables Portfolio Standard requires all electric utilities to provide a minimum of 20% of energy deliveries from qualifying renewable generating resources by 2010, and PG&E will not meet this target until at least 2012.

F12: Agree.

Most residential customers will not be enrolled into MCE until Phase II which is scheduled to occur in early to mid- 2011. The pricing for Phase II customers will be known prior to execution of the Phase II confirmation agreement.

F13: Agree.

F14: Disagree.

Taxpayers have no risk associated with the MCE program. Elected representatives manage the policy formation for numerous complex issues in their respective cities and in the County, including land use, public works projects, transportation, and energy. Furthermore, 1 in 4 Californians receive their electricity from public utilities, which generally charge their ratepayers 20% less than the investor-owned utilities and are governed by elected boards. MEA and the MCE program is only 'new' in the sense that it is a hybrid model between the public utilities and investor owned utilities that supply all energy, that is gas and electricity both. MCE will only be responsible for the procurement of electricity, and PG&E will remain responsible for transmission, distribution, and maintenance. Taxpayers will actually have less risk because MCE will provide rate stability and rate-setting control at the local level. There is considerable risk to the taxpayers of each jurisdiction of not doing MCE, as the costs associated with implementing AB32 mitigations will constitute a considerable drain on every jurisdiction's general fund.

Recommendations

R1: This recommendation will not be implemented.

The risks of implementing MCE are understood and manageable, and the opportunity to reduce green house gas emissions, pursue energy independence and long term price stability, and reap the local economic benefits of this program should not be abandoned out of fear, political opposition or lack of understanding. In fact, the MEA board believes that it may be significantly more risky to forego consideration of MCE program implementation in consideration of projected AB32 compliance costs burden on general funds and highly volatile natural gas markets (which are currently favorable for the CCA program). In addition, the MEA Business Plan anticipates the formation of an Energy Commission of on-going assistance and use to the Executive Director, as well as the experience of the ad hoc Advisory Committee, comprised of citizens with technical expertise in rate-setting, generation, procurement, energy efficiency, renewable energy generation, etc.

R2: This recommendation will not be implemented.

As described in response to F5 above, cooperative approaches have been tried and, in some cases, are continuing. For example, PG&E has worked with local Marin governments, including MEA representatives, to implement an Energy Efficiency Partnership program detailed in a previous Grand Jury report (2008) on the County Sustainability Team. PG&E is unable to provide additional service and funding in Marin County without violating CPUC requirements for fairness across the PG&E territory.



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The so-called bureaucracy of MEA is not expensive, and costs nothing to member jurisdictions' general funds, unlike all other energy programs suggested by the Grand Jury. MEA estimates that the fully-loaded staff cost will comprise only 3% of the annual budget.

No other possible programs that reduce greenhouse gas emissions, such as SEED, Energy Efficiency, solar panels on public buildings, etc., approach the projected level of greenhouse gas emissions reductions that can be obtained by MCE.

R3: This recommendation will not be implemented.

The Councils and BOS are following proper analytical, public notice and public hearing procedures for the County and the other governmental member agencies of MEA to approve or reject membership of their respective agencies in the MEA. As previously stated, the final decision on participation rests with the individual ratepayers, who will have four opportunities to opt out in the 120 day opt-out period.

R4: This recommendation will not be implemented.

To avoid compromising the negotiation process, to avoid abrogating the confidential nature of the bidding process, or of the information submitted by the bidders, and/or MEA's pricing strategy, the final contract will only be released publicly after execution. As stated previously, pricing will be refreshed and will be known with certainty prior to the execution of the contract for both Phase I and Phase II.

Charles McGlashan, Chair
Marin Energy Authority Board of Directors
3501 Civic Center Drive, #308
San Rafael, CA 94903

December 23, 2009

RECEIVED
JAN 04 2010
CITY OF SAUSALITO

Re: MEA non-fulfillment of 90 day review period

Dear Charles:

The Marin United Taxpayers Association (MUTA) and Californians for Renewable Energy (CARE) understand that MEA has provided to member Marin towns and cities a document that purports to be its electricity supply agreement, and the circulation of this document is not, in actuality, utilizing the 90 day period which MEA is required to provide Marin cities and towns to review the proposed agreement in order that they may consider whether or not to withdraw from the Authority. Furthermore, after spending seven years of study, suddenly this 90 days is rushed as well over the Christmas and New Year's holidays. While February 4th is the "deadline", cities and towns have only until January 12th to withdraw. Why the rush when so much is at stake?

MUTA and CARE believe that the contract which you have provided to the cities and towns lacks the real terms that are necessary for any meaningful decision making. It does not identify the electricity supplier, despite the fact that Barbara George of Women's Energy Matters announced at the Ross Town Meeting on December 10th, that you, Damon Connelly, Dawn Weitz and two Navigant Consultants were delayed from attending that meeting and because you were detained in the airport in Houston, arfter meeting with the CEO and others at Shell Energy North America, a wholly owned subsidiary of Royal Dutch Shell. Why not name Shell in the contract, when it obvious that Shell is your choice? And why not at least provide tentative prices, even though the actual pricing, we are well aware, is the very day and minute you enter the contract. Why not also reveal that only 20% of Marin's load, the cities and towns' governmental electrical needs are to be "nailed down with certainty" for five years, that those of us who are citizens do not have such certainty as our contract will have to be negotiated at the time the "80%" of MEA's load enters into a contract one year hence?

Therefore both MUTA and CARE believe that without including such basic terms, i.e. as naming Shell Energy and at least providing some tentative even ball park pricing, you are asking the cities and towns to sign a blank – fill in the spaces – document. MUTA and CARE are aware that other members of the public as well as the Marin Civil Grand Jury have questioned whether the document sent out by MEA contains sufficient information for adequate review and evaluation. We request that MEA provide Marin towns and cities with the full required 90-day review period including the above requested information.

Thank you for your consideration. If you have questions, please feel free to contact either of us.

Sincerely yours,

Basia Crane

Basia Crane, President
Marin United Taxpayers Association
67 Kent Avenue
Kentfield, CA 94904

Juliette Anthony

Juliette Anthony
Legislative & Regulatory Consultant
Californians for Renewable Energy
678 Blackberry Lane
San Rafael, CA 94903

cc: MUTA Board of Directors
CARE President & Board of Directors
All MEA member cities & towns
Honorable Michael Peevey, President CPUC and Commissioners
Senator Mark Leno
Assemblyman Jared Huffman
Senator Barbara Boxer
Senator Diane Feinstein
Honorable Susan Kennedy, Chief of Staff, Governor's Office (Marin Resident)
Honorable Terry Tamminen, Governor's Energy Consultant
New York Times SF Bay Bureau
SF Chronicle
Marin Independent Journal

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Director
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January 4, 2010

Mr. Charles McGlashan
Chair, Board of Directors
Marin Energy Authority
3501 Civic Center Drive #308
San Rafael, CA 94903-4157

Dear Mr. McGlashan:

This is to inform you of updates in costs and rates that determine Pacific Gas and Electric Company's (PG&E's) projected electric supply prices to our Marin retail electricity customers -- and specifically the PG&E approved and forecast prices that the Marin Energy Authority should use to determine its compliance with the resolution adopted on November 5, 2009, requiring that the Authority's confirmed pricing under its proposed Community Choice Aggregation (CCA) program be "at or below" PG&E's "projected" costs.

On December 30, 2009, PG&E filed an update of its 2010 electric rates with the California Public Utilities Commission (CPUC) as required by CPUC ratemaking requirements. Through this public filing, known as the "AET Update" (updating PG&E's September 1, 2009 Annual Electric True-up (AET) Advice Letter) PG&E's electricity procurement and generation revenues (excluding Competition Transition Charge, or CTC, revenue) will be reduced from the levels in PG&E's current electric rates by $332 million effective January 1, 2010.[1] This corresponds to a reduction of nearly 5% in PG&E's system average generation rate to its customers. The principal reasons for this rate reduction are savings in PG&E's electricity procurement costs, including reduced costs of natural gas. The filing also provides the non-bypassable charges that customers must pay, whether they receive their generation service from PG&E or a CCA.

As a result, based on this CPUC filing, the PG&E electric supply rate or price that the Marin Energy Authority must "meet or beat" beginning January 1, 2010 is 7.60 cents per kilowatt-hour (kWh).[2]

Information presented in the Implementation Plan which MEA submitted to the CPUC on December 4, 2009 indicates that MEA's rates to Phase I customers in 2010 and 2011 will be 13.6

[1] PG&E's CTC rates are separately identified from its generation rates and are owed by customers whether or not they select CCA service. Since the level of CTC revenues and rates does not affect a customer's economic choice between PG&E bundled and CCA service, this letter excludes CTC revenues and rates from the figures presented.

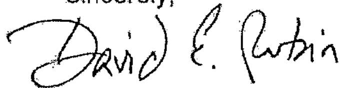
[2] Under PG&E's December 30, 2009, filing at the CPUC (Advice 3518-E-A), PG&E's expected 2010 system average generation rate will decrease from the current $0.086/kWh to $0.081/kWh, where both average rates are calculated by applying current and proposed rates to PG&E's forecasted 2010 sales. Considering the usage characteristics of PG&E's customers within the Marin Energy Authority (MEA) area, the average generation rate decreases from $0.094 to $0.090/kWh. The "shopping credit" or "price to beat" for a potential CCA customer depends on the portion of this generation rate that is non-bypassable. PG&E's AET Update workpapers contain estimates of the non-bypassable Power Charge Indifference Adjustment (PCIA) rates by customer class. As discussed in footnote 1, one of the non-bypassable charges – the CTC – has been calculated separately. For customers served by PG&E in the Marin Energy Authority area, the average PCIA rate is expected to be approximately $0.014/kWh, leaving a "price to beat" of $0.076/kWh.

and 13.9 cents/kWh, respectively[3]. This is about 50% higher than the average PG&E generation rate for Marin customers of 9.0 cents/kWh. Subtracting the line items entitled "Exit Fees"[4] and "Renewable Portfolio Adjustment"[5] results in net rates of 11.3 and 12.2 cents/kWh, which are about 50% higher than the 2010 PG&E price to beat of 7.6 cents/kWh.

Finally, MEA continues to incorrectly state the history of PG&E's electric rate changes for purposes of MEA s projection of future PG&E prices during the 5-year term of the Shell Energy contract. In fact, as described in Josh Townsend's March 5, 2008 letter to you, over the prior 10 years PG&E's generation electric rate changes that would be avoided by a CCA have averaged between 1.0% to 2.0%, not the 3.4% presented by MEA. Furthermore, PG&E currently expects its generation rate to <u>decrease</u> by approximately 7% in 2011. Even assuming that MEA's forecasted 3.4% annual increase is correct for the 2012-2015 time-frame, MEA's electricity prices would be approximately 20-30% higher than PG&E's over this period.

I will continue to keep you informed about PG&E's electric supply prices. In the meantime, please feel free to contact Joshua Townsend or me if you have any questions.

Sincerely,



David E. Rubin
Director, Service Analysis

cc: Dawn Weisz, MEA Interim Executive Director
Joshua Townsend, PG&E

[3] These costs are derived from the line item "Total Revenues" in the Table entitled "Marin Clean Energy, Summary of CCA Program Phase-In" (MEA Implementation Plan, page 44), divided by line item "Retail Demand" minus line items "Distributed Generation" and "Energy Efficiency" in the Table entitled "Marin Clean Energy, Proposed Resource Plan" (MEA Implementation Plan, page 24).

[4] It is not clear why MEA would be charging its customers "Exit Fees" owed to PG&E. For purposes of this letter, I am assuming that MEA intends to charge its customers the portion of the CRS that is represented by the PCIA, and remit these to PG&E, even though there is no provision within the CCA rules for this type of billing arrangement.

[5] I am assuming that the Renewable Portfolio Adjustment is the incremental cost associated with the additional renewables necessary to serve the customers receiving service under the Deep Green option. Subtracting out this amount allows us to make an apples-to-apples comparison between MEA's "Light Green" tariff and PG&E's "price to beat".

**From:** Tuckey, Jamie [jtuckey@co.marin.ca.us]
**Sent:** Tuesday, January 05, 2010 3:51 PM
**Subject:** MEA Response to 1/4 Letter
**Attachments:** image003.jpg; PGE Rates_2010 .pdf

Dear Board Members, Council Members and City Managers,

In response to the letter distributed yesterday by David Rubin at PG&E (dated January 4th, 2010) we would like to provide you with this background information. MEA staff and technical consultants have been closely monitoring PG&E's rates including the recent rate changes approved by the CPUC and implemented on January 1st. The rate reduction submitted and approved by the CPUC was actually much smaller than PG&E had forecast in September of 2009. This, combined with historical rate projections and approvals demonstrates that PG&E often has difficulty projecting its rates. It also demonstrates how volatile PG&E's generation rates are.

Given the current, approved PG&E rate and the indicative pricing we have received from power suppliers we remain confident that MEA can provide service to its light green customers with costs at or below PG&E while also reducing the rate risks and uncertainty customers face when buying their generation services through PG&E.

Also, some claims are made in the letter related to PG&E's recent historical generation rates increases. We have attached a summary of PG&E's recent rate history as filed publically with the CPUC to demonstrate the actual figures.

Please feel free to contact me if you have any questions or need additional information.

Thank you,

Dawn Weisz

Dawn Weisz
Interim Director
Marin Energy Authority
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San Rafael, CA 94903
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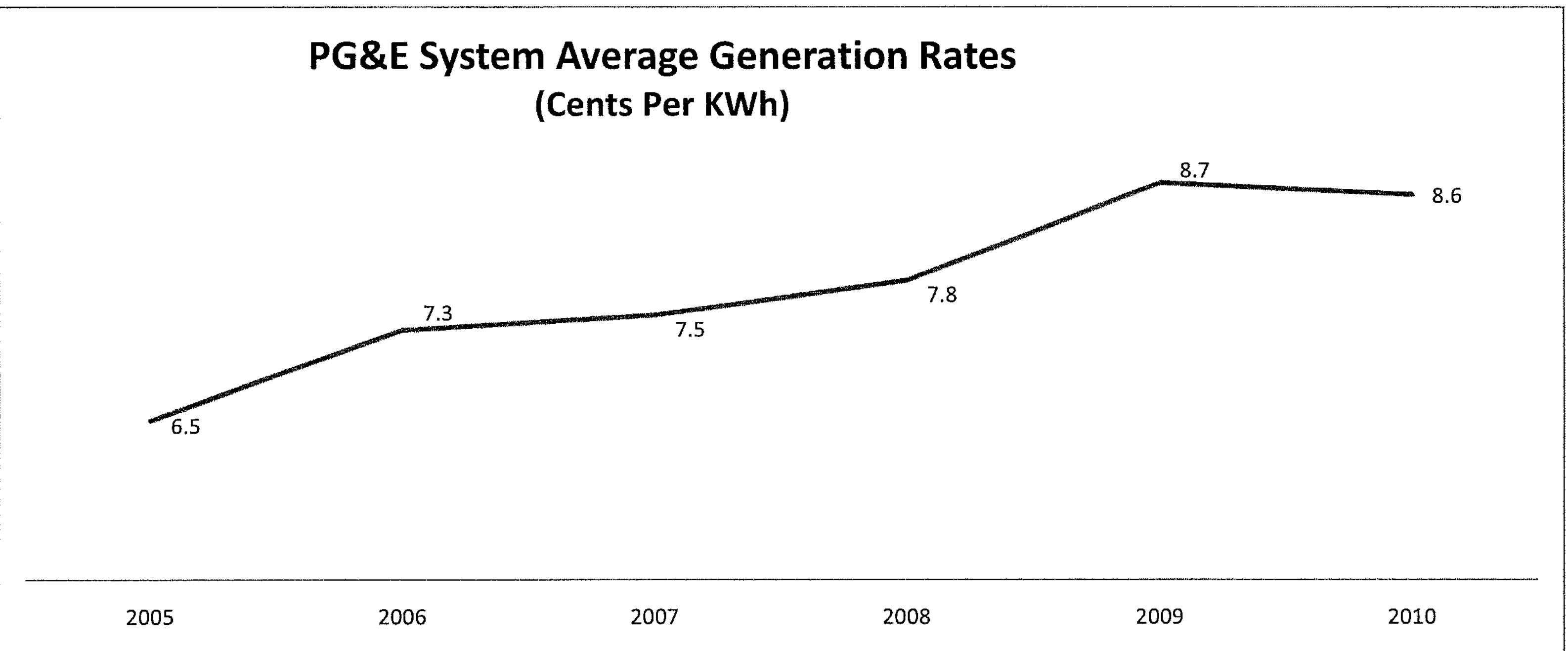
Email Disclaimer: http://www.co.marin.ca.us/nav/misc/EmailDisclaimer.cfm

## PG&E Generation Rate History
## Authorized System Average Generation Costs
## 2005 through 2009

| Year | PG&E Authorized Generation Costs (Cents Per KWh) | Annual Percentage Increase | Source |
|---|---|---|---|
| 2005 | 6.5 | | PG&E Advice Letter 2570-E-A, December 30, 2004 |
| 2006 | 7.3 | 13.1% | PG&E Advice Letter 2706-E-A, December 30, 2005 |
| 2007 | 7.5 | 1.9% | PG&E Advice Letter 2895-E-A, December 28, 2006 |
| 2008 | 7.8 | 4.3% | PG&E Advice Letter 3115-E-A, December 27, 2007 |
| 2009 | 8.7 | 11.6% | PG&E Advice Letter 3349-E-A, December 30, 2008 |
| 2010 | 8.6 | -1.3% | PG&E Advice Letter 3518-E-A, December 30, 2009 |
| **Compound Annual Growth Rate** | | **5.8%** | |

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