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Board of Supervisors for Contra Costa County  
651 Pine Street  
Martinez CA 94553  
via electronic mail

Re:    Establishing a County-Only Clean Energy Authority

Dear Supervisors:

I write to express concern with the Board's apparent direction that the staff limit further consideration of establishing a community choice energy (CCE) authority to serve the unincorporated areas of the county and those municipalities that elect to join (hereinafter, "county authority"). The studies conducted by staff and its consultant<sup>1</sup>, combined with the input provided by Marin Clean Energy (MCE) and other parties, leave many critical questions unanswered. For this reason, it is premature to deliver the bulk of our county either to MCE or to the authority in formation by the Alameda County government. Unless further answers to the concerns and questions stated below show otherwise, the proposed county authority will prove to be more effective in achieving our county's policy goals, more economically efficient and accountable, and more resilient in the face of external risks.

The direction to limit consideration of the county-only authority flies in the face of one of the most critical conclusions of the three consulting firms. Each of these firms concludes unequivocally that local economic benefits of a county authority are the "greatest" of the alternatives presented. [Presentation, at 18](#). The comparison chart finds no difference in the relative effectiveness of the three alternatives in achieving the environmental goal of greenhouse gas (GHG) reduction. The chart concedes that any incremental start-up costs of a county-authority would be "low." The consultants note that an expansion of MCE could saddle Contra Costa with "expensive legacy contracts," but fail to quantify the impact on our ratepayers. [Presentation, 20](#). Despite these negatives, the consultants persist in arguing that the "program risks" of going it alone would be high. They provide little quantitative support or specificity as to why they believe this might be the case.

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<sup>1</sup> Three consulting firms produced a draft report dated November 30, 2016 ([http://64.166.146.245/docs/2017/BOS/20170117\\_872/28354\\_Attachment%20A\\_Draft%20Technical%20Study%201Dec2016.pdf](http://64.166.146.245/docs/2017/BOS/20170117_872/28354_Attachment%20A_Draft%20Technical%20Study%201Dec2016.pdf)). The staff made a presentation dated January 17, 2017 ([http://64.166.146.245/docs/2017/BOS/20170117\\_872/28354\\_Attachment%20D\\_BOS%20CCE%20Presentation.pdf](http://64.166.146.245/docs/2017/BOS/20170117_872/28354_Attachment%20D_BOS%20CCE%20Presentation.pdf)) (hereinafter, "Presentation"). Most of the pages of this presentation have a heading with the logo of one of the consulting firms, MRW.

The Board's movement toward limiting further consideration of a county-specific authority ignores the largest risk of all – that a multi-county authority will not be subject to effective supervision, leading to economic inefficiency and lack of public control over policy. A confab of 35 elected officials from four different counties meeting for a few hours nine times a year can do little to influence, let alone regulate, actions taken by the management, which this Board would place in charge of more than a quarter billion dollars in funds annually collected from ratepayers. Even though Contra Costa county would comprise well over half of MCE's load, it may be difficult for county experts and residents to understand or influence its governance. MCE board meetings are an hour drive from our county seat (twice as long by public transportation), and even more remote for most residents.<sup>2</sup>

A THE COUNTY AUTHORITY CAN BE MORE EFFICIENT AND ACCOUNTABLE.

Publicly owned utilities lack the market discipline of private ownership, the disclosure enforced by the Securities and Exchange Commission (SEC), and most of the regulatory supervision provided by the California Public Utilities Commission (CPUC). The Board needs to substitute a governance structure that will ensure that the authority is driven by economic efficiency and fidelity to the policy goals that the Board sets. Without effective political supervision, management may have incentives to increase its scale and geographic footprint without regard to the interests of its customers and constituents.

The structure assumed for a multi-county entity may combine the worst of both private and public governance. Management will report to a complex and changing board of directors potentially growing to include almost three dozen political actors from multiple counties with very different climactic, economic, and policy conditions. The Board may change every time any of the member jurisdictions has an election, resignation, or vacancy. There may be little continuity and, more critically, no single regulator focused exclusively on the performance and planning objectives set forth by the management. In the case of an Alameda-Contra Costa entity, the consultants note ([Presentation, 21](#)), we would be “small fish” in a larger pond dominated by Oakland and Hayward. But the larger concern is that no governing body can effectively control or even scrutinize decisions of the management when it is comprised of 30-35 elected officials delegated from as many different jurisdictions

By contrast, this Board has staggered elections and a record of continuity. It has the capacity to delegate to a single expert. This expert would have the capacity to review management plans critically and to provide direction subject to review by the Board. A single-county regulator would be the most economical solution, as he or she would retain

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<sup>2</sup> Google maps advises leaving Martinez at 6:05 by car or 5:12pm by transit to reach the 7pm meeting in San Rafael.

staff or consultants only as necessary. In short, the Board would separate the managerial functions of the authority from its regulation - something that MCE has talked about doing, but never implemented.<sup>3</sup> Municipalities participating in a joint powers authority for our county would be well-advised to delegate regulatory supervision to this Board and the regulator it appoints.

In designing an appropriate structure for a county clean energy authority, our Transportation Authority (CCTA) provides a point of departure.<sup>4</sup> Unlike most utility districts, CCTA is appointed, not elected. Like every clean energy authority in California other than MCE, it is confined to a single county. However, the Board has limited representation on CCTA, which is a federation with representation from ten cities and two special districts. The lack of unified direction reflects CCTA's need to "balance" the interests of different localities, which also justifies the strict allocation of funds among regions of the county. By contrast, residents of central and east Contra Costa county generally have common objectives with regard to clean energy. In contrast to road repairs, there will likely be a consensus that some areas in the county are more appropriate for the development of non-rooftop alternative energy generation. The employment impacts are county-wide (but not as broad as MCE's potential footprint). The electric rate structure is uniform within the proposed area, but very different from Marin County and the parts of east Contra Costa County that MCE already serves. These circumstances confirm the need for regulation and political supervision by the Board. (Municipalities participating in a joint powers authority would be well-advised to delegate to the county.)

#### B. SEPARATE COUNTY AUTHORITIES ARE LIKELY TO BE MORE INNOVATIVE AND RESILIENT.

The consultants' suggestions that a county authority will entail "effort," "risk," and "substantial resources" (e.g., [Presentation at 19](#)) are vague and fundamentally inconsistent with their conclusion that there would be little added start-up cost. If Contra Costa acceded to MCE or an Alameda joint power authority, there would be 14 new county and municipal directors, each requiring staff in order to make any well-informed decision. The salary of an expert regulator reporting to this Board is almost certainly less than any reasonable cost allocation based on those commitments.

Constituents of both MCE and new authorities in Alameda and Contra Costa will benefit if their aggregators compete and benchmark against each other. In contrast to a utility based on shared facilities (e.g., power distribution, water, or wastewater), there are few economies of scale associated with generating renewable energy and aggregating

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<sup>3</sup> The [2014 implementation plan provided \(at 12\)](#): "MCE may also establish an 'Energy Commission' formed of Board-selected designees. The Energy Commission would have responsibility for evaluating various issues that may affect MCE and its customers, including rate setting, and would provide analytical support and recommendations to the Board in these regards."

<sup>4</sup> CCTA was created by referendum, and is not a joint powers authority.

energy demand. The existence of multiple authorities will encourage innovation, identify alternative practices, and highlight both successes and failures. By contrast, consolidation could reduce efficiency by creating a single, large public monopoly with no peers. The merged entity may blame its own shortcomings on external risks. The Board should avoid this temptation to eliminate the transparency that multiple entities would create.

This consideration is critical, because all clean energy authority face significant external risks that are probably increasing. Federal policy may become more favorable to fossil fuels, and state support for clean energy development may be curtailed. Hydropower is increasingly variable. Locally produced clean energy substitutes for fuels that are subject to national and global market pricing. If MCE or another established entity clearly has the best strategy for addressing these risks, it can be emulated. But where alternative approaches may have merit, newly formed authorities for Alameda and Contra Costa can try them as well.

Finally, a number of allied county authorities acting in concert will likely have more political influence to support clean energy at the state level. MCE wants credit for \$4.6m in subsidies from the CPUC for energy development (that have already been fully committed to programs in Richmond or outside Contra Costa). The CPUC has made clear that it will *not* increase grants to MCE in proportion to the increase of its customer base.<sup>5</sup> New county authorities in Alameda and Contra Costa may be better placed to lobby their legislators to encourage similar grants than that the single Marin-based entity has been in persuading regulators to increase the subsidies that it alone receives.

#### C. THE COUNTY AUTHORITY CAN BE MORE TRANSPARENT AND MORE EFFECTIVE IN PROMOTING COUNTY POLICY GOALS.

I accept MCE's criticism that the Board's [consultants](#) have provided "scant analysis of MCE's operational program," and "no analysis" of MCE's local renewable program, customer-sited solar, job creation, and other benefits. But MCE does not dispute the consultants' warning that it has "expensive legacy contracts." MCE also fails to provide much insight into its forward-looking plan, which may have been changed by the accession of Walnut Creek and Lafayette (and would be further changed if the rest of the county joined).

MCE has no financial disclosures on file with the SEC, since it is not a public company, nor the IRS, since it is not a public charity. MCE attempts to comply with the Brown Act,<sup>6</sup> but basic information (such as the geographical distribution of load and voting shares) can be difficult to locate on its website. Although MCE provides some

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<sup>5</sup> CPUC has rejected MCE's suggestion that its energy efficiency budget be increased proportionally to the expansion of its customer base. Agenda ID #14791, modifying D.14-10-046, <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M159/K757/159757199.PDF#page=11> Conclusions 1 and 3

<sup>6</sup> As of Jan. 23, 2017, the link for the agenda packet of the Jan. 19, 2017 meeting was broken. Screenshots are on file.

data to the CPUC, it is not subject to rate case regulation. Management effectively decides its own revenue requirement and designs the rates it recovers from each customer class.

A county-specific authority could also be more responsive to the economic needs of Contra Costa's middle class. Some MCE directors represent jurisdictions with average household incomes that are more than double that for Contra Costa County.<sup>7</sup> Generally, MCE mirrors PG&E rates, but the rates and baselines for much of Marin and West Contra Costa County differ significantly from the warmer areas of central and east Contra Costa that are involved in this proposal.<sup>8</sup> As the consultants' sensitivity analysis notes, there are scenarios where CCE rates may increase and significantly exceed those that would have been available had the customer remained with PG&E. In such a circumstance, Contra Costa policy may require rate designs that provide some relief to working families; wealthier jurisdictions may have a different view. MCE management has also recently committed to provide concessions to retain large business customers. PG&E cannot implement such potentially regressive rates with careful review by the CPUC, from which MCE is immune. By preserving its authority over a county-only authority, this Board can ensure that rates paid by residents in Contra Costa are progressive and cost-based.

D. MCE HAS COMMITTED ITSELF ***NOT*** TO UPDATE ITS BUSINESS PLAN TO CONSIDER OUR COUNTY'S LOCAL ECONOMIC NEEDS AND POLICY PRIORITIES.

It may be a particularly inopportune time to consider joining MCE. Last week, MCE filed its quadrennial [business plan](#) with the CPUC, following a schedule that it has known for some time. Throughout this business plan, MCE stresses the divergent characteristics of its five non-contiguous service areas (Marin, Napa, Benicia, West Contra Costa, and Walnut Creek/Lafayette). It also emphasizes its "competitive advantage" over PG&E because "MCE's programs take a flexible approach to the ***uniquely*** local characteristics."<sup>9</sup> [emphasis added] The business plan makes no mention of the pending discussions regarding Contra Costa County and contains no data regarding any part of the county that MCE does not already serve. Yet, the proposed accession would almost double MCE's size, as measured by load.

In a related application, MCE reveals that it expects to escape any CPUC review of the impact of the proposed accession. Remarkably, it again makes no mention of the negotiations with our County to double its size. But MCE does propose that ***any*** enlargement to the service area occur without revision to its business plan in ***any*** respect.

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<sup>7</sup> E.g., [Ross average family income \\$200,833 v. Contra Costa \\$95,083](#).

<sup>8</sup> [https://www.pge.com/nots/rates/PGECZ\\_90Rev.pdf](https://www.pge.com/nots/rates/PGECZ_90Rev.pdf)

<sup>9</sup> Business plan at 21. [https://www.mcecleanenergy.org/wp-content/uploads/2017/01/EE-BusinessPlan2017\\_20160105\\_filing.pdf#page=21](https://www.mcecleanenergy.org/wp-content/uploads/2017/01/EE-BusinessPlan2017_20160105_filing.pdf#page=21)

MCE anticipates that including new communities will generally not require a reconsideration of the logic or fundamental approach articulated in its Business Plan. However, updating the Business Plan to reflect a newly included community would require considerable administrative work through an application filing and a resulting proceeding.<sup>10</sup>

Instead, MCE proposes that, after any expansion, it would file an “advice letter,” with no more than a “current service area map with associated market characterization information to reflect any new communities.” (The CPUC may not approve this approach, which would allow its staff to increase subsidy allocations to MCE with minimal review.) While I do not question the motives of MCE management, the proposal (if adopted by the CPUC) could place MCE in the odd position of *being forced* to tell this Board that it could not consider any changes based the economic needs or policy decisions of Contra Costa County. Doing so would be inconsistent with the CPUC-approved business plan, which is based on “unique local characteristics” of *other* communities.

#### CONCLUSION

A gathering of 30-35 elected officials from multiple counties with different climates, different demographics, and different policy preferences cannot effectively govern a utility. Such a diffuse governing body cannot effectively promote environmental and economic objectives, or reconcile the trade-offs that they inevitably entail. I fully respect MCE’s success as a pioneer of community choice. However, unless MCE or the consultants provide a more compelling justification, or offer proposals to mitigate concerns about public accountability, a multicounty authority does not appear consistent with the public interest. Instead, this Board should (1) facilitate the creation of a Contra Costa-only community choice aggregator and (2) recruit an expert to regulate its business plans, rates, and practices, always subject to ultimate review by the Board itself.

Sincerely,



Scott J. Rafferty

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<sup>10</sup> Application at 27. <https://www.mcecleanenergy.org/wp-content/uploads/2017/01/01-17-17-MCE-EE-Application-with-Verification.pdf#page=27>