

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

tenslow@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. MESSING

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

September 14, 2021

Via Email Only

Board Members
California Community Power
70 Garden Court, Suite 300
Monterey, CA 93940
Email: comments@cacommunitypower.org

Re: Letter on Behalf of IBEW Locals 6, 413, 595 and 617; September 15, 2021 Agenda Item 6(B): Resolution 21-09-09 Approval of Competitive Rates, Labor, Environmental, and Environmental Justice Policy

Dear Chair and Board Members:

I am writing on behalf of International Brotherhood of Electrical Workers Union Locals 6 (San Francisco), 413 (Santa Barbara), 595 (Alameda) and 617 (San Mateo) (collectively "IBEW") to request continuance of Agenda Item 6(B), Consideration of Approval of Resolution 21-09-09 Competitive Rates, Labor, Environmental, and Environmental Justice Policy ("the Proposed Policy"). IBEW supports the adoption of formal California Community Power ("CC Power") policies to ensure that CC Power will seek to award contracts and negotiate contract terms that support the creation of local jobs, support local business, support union labor and apprenticeship programs that create employment opportunities, support maintaining area construction wage standards, support inclusive business practices, and ensure consideration of environmental and equity impacts when entering into agreements that will result in the siting of new power plants and energy storage facilities.

While Locals 6, 413, 595 and 617 are pleased that the Proposed Policy addresses a number of these issues, several key provisions in the Proposed Policy

4994-008acp

September 14, 2021

Page 2

are vague in scope and intent as written. For policies to be effective, they must be clear both to bidders and to future staff and board members who may not have the institutional memory of the intended interpretation of the policies.

In particular, the Proposed Policy requires clarification that its scope includes both construction projects built by third parties resulting from procurement agreements as well as any construction projects built through direct contracts with CC Power and its members. The Proposed Policy also requires clarification that its scope includes both power purchase agreements and energy storage agreements.

The prevailing wage provisions of the Proposed Policy are also vague. The prevailing wage policies previously adopted by CC Power for the Long Duration Storage project specifically stated that the policy applied even where a project would not be considered a “public work” project under the California Labor Code (e.g., a project built pursuant to a power purchase agreement). The Proposed Policy does not contain this clarification and creates a risk that bidders or future staff may misinterpret its intent. The Long Duration Storage policy also expressly listed the relevant Labor Code sections include Sections 1777.5 and 1777.6 which require public works contractors to request dispatch of apprentices from a state-approved program. The Proposed Policy deletes the references to these sections and thus could be interpreted to exclude the public works apprenticeship requirements – which are key to ensuring ratepayer expenditures support workforce development.

The Proposed Policy also rejects stakeholder recommendations to include: (1) a PLA requirement consistent with what is authorized under Labor Code Section 2500 for projects where CC Power directly contracts for construction (in contrast with a PLA bidding preference where third parties construct a project pursuant to a purchase agreement or energy storage service agreement); (2) a bidding preference for projects located within the geographic boundaries of the CC Power members so that ratepayer funds are spent with a preference to create local jobs; (3) a public advisory committee; and (4) a prohibition on development of projects that rely on unbundled renewable energy credits – which are difficult to verify and can be used to avoid constructing new renewable power projects.

IBEW Locals 6, 413, 595 and 617 respectfully request that approval of this policy be continued until the next Board Meeting to allow time for additional clarifying language to be developed and to allow additional time for stakeholders

4994-008acp

and the boards of member CCAs to provide input on the four disputed recommendations. A continuance would have no impact on any pending CC Power projects since its Long Duration Storage project is being negotiated pursuant to the project-specific labor and environmental policies adopted by the Board earlier this year with the support of IBEW and other stakeholders. The Proposed Policy would apply only to future projects.

I. Background on Policy Development

CC Power is a Joint Powers Agency comprised of ten CCAs and controlled by a Board made up of CCA staff. CC Power will negotiate region-wide procurement and power/energy storage agreements on behalf of member CCAs. Due to concerns that a statewide JPA controlled by administrative staff with no direct public official oversight reduces public-accountability and transparency, a coalition of labor and environmental groups requested that CC Power adopt meaningful labor and environmental policies to govern the negotiation of project contracts. CC Power has been responsive to this request and formed a policy subcommittee to evaluate proposed policies.

As an interim step to adopting general labor and environmental policies, CC Power adopted a project-specific labor and environmental policy to govern its current Long Duration Storage project RFP process. Among other requirements, this policy requires the Long Duration Storage project to comply with specified California prevailing wage provisions even if the construction project would not meet the definition of a public work under Labor Code section 1720. This policy recognized that, because third party construction projects built pursuant to a power purchase or energy storage service agreement would not generally fall under the statutory definition of a public work, CC Power would have to independently adopt a prevailing wage requirement to cover those types of projects. The Long Duration Storage project prevailing wage requirement expressly incorporated applicable Labor Code requirements including Labor Code section 1777.5 which requires contractors subject to prevailing wage compliance to request dispatch of apprentices from state-approved apprenticeship programs. This apprenticeship dispatch requirement ensures that projects developed through public or ratepayer funds support workforce development.

Because the Long Duration Storage policy is project-specific, it contains a more limited policy than needed to address a general policy covering a variety of different types of projects.

II. Concerns with Proposed Policy

A. Scope of Policy Is Ambiguous.

The Proposed Policy states that it applies where “CC Power enters into contracts for utility-scale projects that provide power supply on behalf of CC Power Members.” This scope is unduly vague as written. The term “projects that provide power supply” does not clearly encompass energy storage projects. In addition, the term “contracts for utility-scale projects that provide power supply” should be amended to more clearly state that it applies to both procurement and direct construction agreements.

IBEW recommends adopting a more encompassing scope that states: “This policy applies to the solicitation, development, negotiation and award of contracts by CC Power to meet the integrated resource plan needs of the CC Power members.”

B. Clarification of Prevailing Wage Requirement

The Proposed Policy states that “For projects located in California, contracting partners shall comply with California prevailing wage provisions applicable to public works projects.”

This language differs significantly from the policy language adopted for the Long Duration Storage project. That policy stated: “Any construction work contracted by parties in furtherance of this agreement, whether or not it is a public work as defined by Labor Code section 1720, shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6 as they may be amended from time to time.”

There are two substantive differences between the Long Duration Storage project prevailing wage language and the Proposed Policy language. First, the Proposed Policy does not contain the language clarifying that it applies even where a project would not otherwise be considered a public work under state law. Because

the Proposed Policy does not contain this clarification, it creates a risk that bidders or future staff may misinterpret its intent.

Second, the Long Duration Storage policy expressly lists relevant Labor Code sections, including Sections 1777.5 and 1777.6 which require public works contractors to request dispatch of apprentices from a state-approved program. The Proposed Policy deletes the references to these sections and thus could be interpreted to exclude the public works apprenticeship requirements – which are key to ensuring ratepayer expenditures support workforce development.

IBEW has been informed that the subcommittee’s preference is to not cite specific labor code sections. While the preference would be to simply adopt the same language used in the Long Duration Storage project, an alternative that would eliminate the ambiguity in the Proposed Policy language would be the following:

“Whether or not a construction project is a public work as defined by the California Labor Code, contracting partners shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to the Labor Code sections pertaining to employment of apprentices on public works projects. Projects located outside of California shall comply with the public work requirements applicable to that jurisdiction.”

C. PLA Requirement for Construction Directly Contracted by CC Power

The Proposed Policy should be amended to require a project labor agreement on a project where CC Power directly contracts for construction. Public Contract Code section 2500 expressly allows adoption of a PLA requirement where a public agency is directly contracting for construction. This would be a separate and additional policy from the PLA bidding preference policy contained in the Proposed Policy where third parties construct a project pursuant to a purchase agreement or energy storage service agreement.

D. Bidding Preference for Local Projects that Create Local Jobs

The Proposed Policy should be amended to include a bidding preference for projects located within the geographic boundaries of the CC Power members so that

ratepayer funds are spent with a preference to create local jobs. The bidding preference should be tiered to (1) projects within geographic boundaries of the CC Power members; (2) projects in California; and (3) projects whose first point of connection is within California.

E. Prohibition on Unbundled Renewable Energy Credits

The Proposed Policy should be amended to prohibit projects involving the use of unbundled renewable energy credits (RECs) to meet member renewable energy goals. Unbundled RECs are difficult to verify and are often used to avoid constructing new renewable power projects.

F. Public Advisory Committee

IBEW urges CC Power to commit to the creation of a public advisory committee. Such a committee would ensure transparency and public engagement, which is particularly important for a staff-run agency without direct public official control.

G. Proposed Policy Should Be Mandatory Unless Deviation Is Approved by the Board

The Proposed Policy states that CC Power will “seek to award CC Power contracts consistent with the following principles. The word “seek” should be replaced with “only.” Policy compliance by staff should be mandatory unless deviation is expressly approved by the Board. Even with this change, the Policy only requires “consistency” and thus provides some flexibility in its implementation. The Policy may always be amended for a specific project, but such amendment should require affirmative Board action.

III. Conclusion

IBEW Locals 6, 413, 595 and 617 thank CC Power for its commitment to address the concerns of stakeholders related to how this new staff-run Joint Powers Agency will operate. For many of the proposals, we appear aligned in intent, but the specific language requires more specificity to reflect that intent. In addition, the Proposed Policy fails to address key stakeholder concerns such as local project preference and transparency through engagement with a public advisory

September 14, 2021

Page 7

committee. We request that this agenda item be continued until the next meeting in order to allow additional stakeholder engagement with the policy subcommittee and input from member CCA boards in order to get this policy done right the first time.

Sincerely,

A handwritten signature in blue ink that reads "Thomas A. Enslow". The signature is written in a cursive style with a long horizontal line extending to the right.

Thomas A. Enslow

TAE:acp

4994-008acp