



CITY COUNCIL AGENDA REPORT

MEETING DATE: NOVEMBER 17, 2020 ITEM NUMBER: PH-2

SUBJECT: COMMUNITY CHOICE ENERGY JOINT POWERS AUTHORITY AGREEMENT AND FIRST READING OF AN ORDINANCE AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

DATE: NOVEMBER 9, 2020

FROM: PUBLIC SERVICES DEPARTMENT / ADMINISTRATION

**PRESENTATION BY: RAJA SETHURAMAN, PUBLIC SERVICES DIRECTOR
SALEM AFEWORKI, ENERGY AND SUSTAINABILITY SERVICES MANAGER**

**FOR FURTHER INFORMATION CONTACT: SALEM AFEWORKI, LEED GA, ENV SP
ENERGY AND SUSTAINABILITY SERVICES MANAGER, (714) 754-5343**

RECOMMENDATION:

Staff requests City Council direction regarding implementation of Community Choice Aggregation and joining the Orange County Joint Powers Authority as follows:

1. Consider approval of the Community Choice Energy (CCE) Joint Powers Authority (JPA) Agreement (Attachment 1) contingent on the City Manager and City Attorney successfully negotiating final terms;
2. Authorize the Mayor and City Clerk to execute the negotiated agreement;
3. Introduce for first reading, by title only, Ordinance No. 2020-xx (Attachment 2), authorizing the implementation of a Community Choice Aggregation Program;
4. Consider the appointment of one (1) regular board member and one (1) alternate member to act on behalf of the City of Costa Mesa on the Orange County CCE JPA Board.

BACKGROUND:

CCE is an alternative electricity supplier that can directly develop and buy electricity on behalf of local businesses and residents, and the incumbent Investor Owned Utility (IOU), Southern California Edison (SCE), will continue to provide transmission and delivery services. The California Public Utilities Commission (CPUC) regulates the CCE and once established, it will become the default electric utility provider of services for that area and the customers must opt-out of the CCE program in order to revert to IOU.

A key State of California mandate that is advancing the use of renewable energy is the Renewables Portfolio Standard (RPS). It requires California load-serving entities (LSEs) such as CCEs, to increase their procurement of eligible renewable energy resources (solar, wind, geothermal, biomass, and small hydroelectric) to 33 percent of retail sales by 2020, 44 percent by 2024, 52 percent by 2027, and 60 percent by 2030. Additionally, the state has made a commitment that renewable energy resources and zero-carbon resources supply 100 percent of all retail sales of electricity by 2045. This explains the increasing numbers of CCEs throughout California. A recent CPUC study states that CCEs will grow by 85 percent in the next decade; that translates to 15 million to 20 million customers.

At the regular meeting on October 20, 2020, the City Council received a presentation from staff on CCE options for Costa Mesa including a JPA led by the City of Irvine (Attachment 3). The City Council directed staff to continue its due diligence and detailed CCE JPA review in collaboration with Irvine and other OC interested cities and return with recommendations regarding next steps.

ANALYSIS:

The first step in establishing a CCE is to perform a technical and financial feasibility study to assess the costs, benefits and risks associated with developing the CCE.

On October 28, 2020, the City of Costa Mesa received Community Choice Energy materials from Irvine that included information on a draft Orange County CCE Pro-forma Pending specific detailed load data (Attachment 4), OC CCE Customer Programs (Attachment 5) and CCE low-income programs including CARE & Baseline Customers (Attachment 6). The draft 10 year financial pro-forma includes three (3) OC CCE scenarios – Scenario 1: Irvine and Huntington Beach; Scenario 2: Irvine, Huntington Beach, Costa Mesa and Fullerton; and Scenario 3: Irvine, Huntington Beach, Costa Mesa, Costa Mesa, Fullerton, Santa Ana, Lake Forest, Tustin, Yorba Linda, Villa Park and Laguna Woods. According to the draft pro-forma, the start-up loan of \$2.5 million and the working capital loan of \$10 – \$18 million is expected to be repaid in 5-7 years through revenues from the net operating revenues of the CCE after expenses are paid. In addition, OC CCE hopes to build financial reserves over the first 5-7 years of 120 days of operating expenses. In the draft pro-forma, after the debt service is repaid, net income could be available to develop customer programs. Irvine's consultant, EES Consulting, will replace the draft estimated pro-forma with specific details and financial data by City, and for the JPA once they receive the Southern California Edison (SCE) load-data for each specific interested city. It is hoped that the joint feasibility study, expected to be finalized by late-November, will detail quantifiable benefits and actionable measures OC member cities can collectively take to mitigate risks and participate in greater opportunities.

At the same time, to meet the tight deadline of CPUC filing by December 31, 2020, the draft JPA terms and conditions are still being discussed and negotiated by Irvine and Costa Mesa. As the JPA will govern, operate and be liable for the OC CCE program, a thorough review and revision of the agreement is critical to meet the needs of the parties and help eliminate confusion about each member agency's assets and liabilities if they withdraw from the JPA or are involuntarily terminated. The City of Costa Mesa representatives – including the City Manager, City Attorney and Public Services staff, are continuing to have JPA negotiation meetings with Irvine to get clarifications and detailed information, with the aim of reaching consensus.

The City of Irvine's City Council considered and approved the attached CCE JPA at its meeting on November 10, 2020 and authorized the City of Irvine's City Manager and City Attorney to further negotiate with interested cities on a final JPA Agreement. The revised version of the JPA attached to this report, includes certain changes requested by the City of Costa Mesa. However, additional issues are still under consideration for further negotiation including the items outlined below. The City of Irvine also approved a finance agreement committing to loan funds to the JPA for initial start-up costs, working capital and to provide collateral for the loan for initial energy purchases. The agreement calls for repayment of the loan by the JPA with interest by 2027. Once the feasibility study is complete, the parties will have the information necessary to further develop and analyze the Exhibits (A, B, C and D) to the JPA related to the financial agreement and voting structures to provide further feedback to the City Council.

In order to meet the CPUC deadline, the City Council could approve the attached JPA contingent on successful resolution on the terms of the agreement to be negotiated by the City Manager and City Attorney. The following are some of the outstanding areas where additional clarification or consensus is needed:

- Equal and meaningful representation for member agencies on OC CCE governing board
- Financing mechanisms and specific loan repayment terms
- Items requiring per capita and special voting requirements
- Clear exit clauses pre- and post-CCE launch, including voluntary and involuntary withdrawals
- CCE assets, liabilities and retirement programs
- CCE milestones

Several of the above topics were also identified by the City Council at the October 20, 2020 meeting.

The Mayor and City Clerk will execute the negotiated JPA. Staff also requests City Council direction regarding the introduction and first reading of the Ordinance for the implementation of a Community Choice Aggregation program for the City of Costa Mesa.

The JPA will be governed by a Board consisting of representative members from each City appointed by their respective City Councils. As the Board is required to take several actions prior to formation of the CCE, staff requests City Council direction regarding the appointment of one member and one alternate to serve on the JPA Board.

ALTERNATIVES CONSIDERED:

The alternative to this Council action would be to continue a steadfast negotiation process with the City of Irvine and other interested cities over the next quarter in order to adequately review and assess the City's specific load data, the feasibility study to be conducted by EES, the elements of the JPA Agreement still requiring clarification and amendment to protect the City's interests, and adequate due diligence regarding all Exhibits to the JPA to which all member agencies would have to adhere. This option should be considered due to following reasons:

- Critical information such as the results of the feasibility study, and final revised JPA agreement that fully addresses Costa Mesa's concerns are not currently available.

The feasibility study is being conducted at this time and while a report may be provided by late November, staff will not have the ability to conduct its due diligence on this before the end of the year.

- Staff has not had the opportunity to conduct community outreach and engagement on CCE to gauge residents' interest in this kind of program. The success of the CCE is highly dependent on acceptance of this program by the community at large. The City and JPA Board will need to conduct outreach to Costa Mesa residents and businesses on the benefits of CCE and ensure that there will be successful participation and retention.
- The City's financial exposure will need to be further evaluated, especially with respect to exit clauses in the JPA agreement, loan repayment and employee benefits provisions for staff of the JPA.
- The CCE formation is on a fast track which has made it difficult for staff to have the data and information needed to make an objective decision on the Irvine led OC CCE at this time. Continuing the negotiations until the City's concerns are addressed is a good outcome and could also lead to additional cities joining the CCE beyond those currently identified.

FISCAL REVIEW:

At this time, there is limited information available to provide a detailed fiscal review and analysis of the potential benefits to Costa Mesa's ratepayers from a CCE partnership with Irvine. Following the receipt of load data and completion of the feasibility study, staff will have more information to further conduct this analysis. Other financial details such as JPA operating costs, debt repayment schedules and projected net revenues are also not available at this time, further limiting the capacity of staff to conduct appropriate due diligence on this important decision. As a member of the JPA, Costa Mesa's ratepayers will be part of a robust energy savings program that may yield positive benefits for many years to come; however, this cannot be achieved without initially incurring significant debt. Additional data, analysis and negotiation will help ensure that the final JPA Agreement maximizes the positive outcomes for Costa Mesa ratepayers.

LEGAL REVIEW:

The City Attorney's office has reviewed this Agenda Report and the Ordinance and approves them both as to form. The City is continuing negotiations with the City of Irvine on various aspects of the JPA agreement. This office recommends that the City Council vest the City Attorney and City Manager with the authority to approve the final language of the agreement prior to the City joining the JPA.

CITY COUNCIL GOALS & PRIORITIES:

A fully negotiated and well-documented CCE program can support the following City Council goals:

- Goal #3: Keep the City Fiscally Sustainable
Take measures to reduce expenditures by including but not limited to implementing energy efficiencies and sustainability practices at City Hall, in public buildings, parks and public spaces.
- Goal #6: Good Government and Community Engagement

Maintain up-to-date and accessible information about public works projects, significant private development sites and other city activities.

CONCLUSION

Staff has evaluated CCE JPA documents and is continuing to have meetings with Irvine and interested OC cities. Staff requests City Council direction regarding implementation of Community Choice Aggregation and joining the Orange County Joint Powers Authority as follows:

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ATTACHMENTS: 1 [CCE Joint Powers Authority \(JPA\) Agreement](#)
 2 [Proposed Ordinance No. 2020-xx](#)
 3 [October 20, 2020 City Council Presentation on CCE](#)
 4 [Orange County CCE Draft Pro Forma Pending Load Data](#)
 5 [CCE Customer Programs Overview](#)
 6 [CARE and Medical Baseline Customers](#)