



MINUTES FINANCE COMMISSION

Wednesday, February 24, 2021 - 5:00 P.M.
City of Huntington Beach
Zoom Webinar

Vice-Chair Casey McKeon called the meeting to order at 5:04 p.m., and led the Pledge of Allegiance.

MEMBERS PRESENT: Casey McKeon, Vice-Chair
Jamie Craver, Commissioner
Frank Lo Grasso, Commissioner
Lawrence Owen, Commissioner
Charles "C.J." Ray, Commissioner
Robert Sternberg, Commissioner

MEMBERS ABSENT: Stephanie Gledhill, Chair

STAFF PRESENT Dahle Bulosan, Chief Financial Officer
Oliver Chi, City Manager
Sunny Rief, Assistant Chief Financial Officer
Serena Bubenheim, Principal Finance Analyst
Glynis Litvak, Senior Finance Analyst
Linda Wine, Administrative Assistant, Finance
Thuy Vi, Administrative Assistant, Finance

ORAL COMMUNICATIONS (7:00) None.

MINUTES

(7:50) **Motion: Moved by C.J. Ray and seconded by Vice-Chair Casey McKeon to approve the Finance Commission Meeting Minutes dated January 24, 2021, as presented**

Ayes: McKeon; Craver; Lo Grasso; Ray; Sternberg

Noes: None

Absent: Gledhill

Abstain: Owen

Approved: 4-0-1-1 (Gledhill-Absent; Owen-Abstain)

DISCUSSION ITEMS AND POTENTIAL RECOMMENDATIONS

(8:18) **Comprehensive Annual Financial Report (CAFR) and Mid-Year Budget Presentation**

Chief Financial Officer Dahle Bulosan provided an overview of the FY 2019/20 Year End Audit Results and FY 2020/21 and Mid-Year Budget Update, which was presented to the City Council at the February 16, 2021 City Council Meeting. Bulosan introduced Jennifer Farr, Audit Partner of Davis Farr. Bulosan stated that the City received an Unmodified (Clean) Year End Audit Opinion. He noted that the City's CAFR is award winning, and has received the Government Finance

Officers Association (GFOA) Excellence in Financial Reporting Award for the last 34 years. He thanked Finance Staff for their hard work in completing the audit with no findings.

(16:00) City Manager Oliver Chi shared the FY 2021/22 Budget Development Calendar. Chi noted that Unfunded Accrued Liabilities (UAL) cost increases were driving significant future year projected General Fund budget deficits. Chi stated that staff will present a UAL refinance plan and UAL funding policy for City Council consideration at the March 1, 2021 City Council Meeting. He noted that in early 2020, the Finance Commission unanimously supported the UAL refinancing and funding policy. Chi reviewed the background of UAL and the CalPERS pension system, the benefits of refinancing the City's UAL debt through Pension Obligation Bonds (POBs), and the UAL Funding Policy.

(1:08:40) Community Choice Energy (CCE)

Vice-Chair McKeon presented a PowerPoint he prepared on Community Choice Energy (CCE), and discussed CCE's background, its benefits, the financial risks of committing to a long-term contract, and the Orange County Joint Powers Authority (OCJPA) financial cost. McKeon expressed concerns with the language in the OCJPA agreement regarding Section 2.1.5, the ability to acquire property via eminent domain, and Section 6.3 regarding continuing liability if the City were to withdraw, as well as the City's General Fund being a potential resource for any liabilities.

City Manager Chi clarified that the City is not liable for any of those expenses. JPAs are separate legal entities, distinct and different from its members participating it agencies.

(1:53:09) **Motion: Moved by Vice-Chair McKeon and seconded by Lo Grasso to advise the City Council that the Finance Commission has concerns regarding the Orange County Power Authority Joint Powers Agreement as follows: (1) Section 2.1.5, the ability to acquire property via eminent domain; (2) Section 6.3, continuing liability if the City were to withdraw; and (3) Section 6.3, that the City's General Fund is a potential resource for any liabilities**

Ayes: McKeon; Lo Grasso; Owen; Sternberg

Noes: Craver; Ray

Absent: Gledhill

Approved: 4-2-1 (Gledhill-Absent)

Chi stated that Staff can work with McKeon to draft a memo.

(2:00:58) Finance Commission Role and Processes

Commissioner Ray shared a presentation he prepared on the Finance Commission (FC) Role and Process. He reviewed Huntington Beach Municipal Code Sections 2.109.030 and 2.109.050 regarding the FC's Purpose and Authority. Ray proposed a Committee Task List (CTL) framework that would operate as an official to do list for committees, whereby the City Council can task committees with initiatives quarterly and annually, and committees can request to investigate/analyze issues, which would require Council approval to proceed. Ray stated that committees

would become an efficient process driven mechanism of support/analysis of information for the City Council.

(2:15:05) **Motion: Moved by Ray and seconded by Craver that a subcommittee prepare a draft Committee Task List (CTL) framework for Finance Commission consideration at the next FC meeting**

Ayes: McKeon; Craver; Lo Grasso; Owen; Ray; Sternberg

Noes: Lo Grasso

Absent: Gledhill

Approved: 5-1-1 (Gledhill-Absent)

Ray and Sternberg are members of the subcommittee.

(2:18:17) Sternberg requested a new motion to support the UAL refinancing.

(2:20:13) **Motion: Moved by Sternberg and seconded by McKeon to reiterate the Finance Commission's approval and recommendation to refinance the City's UAL and to do it as soon as possible**

Ayes: McKeon; Craver; Lo Grasso; Owen; Ray; Sternberg

Noes: None

Absent: Gledhill

Approved: 6-0-1 (Gledhill-Absent)

COMMISSIONER ITEMS None.

COMMISSIONER COMMENTS (2:20:53) McKeon requested that Chi and Bulosan send the FC the refinancing presentation, and said that he would like to invite the CEO of OCJPA to come answer any questions.

Ray thanked McKeon for leading the meeting.

ADJOURNMENT

(2:21:14) **Motion: Moved by Vice-Chair McKeon and seconded by Lo Grasso to adjourn the meeting at 7:21 p.m.**

Ayes: McKeon; Craver; Lo Grasso; Owen; Ray; Sternberg

Noes: None

Absent: Gledhill

Approved: 6-0-1 (Gledhill-Absent)

Submitted by:

Dahle Bulosan, Chief Financial Officer

By: Thuy Vi, Administrative Assistant, Finance Department
Linda Wine, Administrative Assistant, Finance Department

City of Huntington Beach

FY 2019/20 Year-End Audit Results & FY 2020/21 Mid-Year Budget Update

*Finance Commission
February 24, 2021*



Overview

- **FY 2019/20 Audit and Year-End Results**
- **FY 2020/21 Mid-Year Budget Update**
- **FY 2021/22 Budget Development Calendar**

FY 2019/20 Audit & Year-End Results



FY 2019/20 Audit Results

- Auditing firm of Davis Farr LLP audited the City's financial statements and internal controls
- FY 2019/20 Comprehensive Annual Financial Report (CAFR) received an Unmodified (Clean) Audit Opinion
- The City's CAFR is award winning – received the Government Finance Officers Association's (GFOA) Excellence in Financial Award for 34 years



Government Finance Officers Association

Certificate of
Achievement
for Excellence
in Financial
Reporting

Presented to

**City of Huntington Beach
California**

For its Comprehensive Annual
Financial Report
For the Fiscal Year Ended

June 30, 2019

Christopher P. Morill

Executive Director/CEO

FY 2019/20 Performance (Audited)

Government-Wide Highlights (All Funds):

Description	In Thousands
<u>ASSETS</u>	
Current and Other Assets	\$352,633
Capital Assets	857,544
Total Assets	1,210,177
Deferred Outflows – Pensions & OPEB	57,761
<u>LIABILITIES</u>	
Current and Other Liabilities	33,152
Long-Term Obligations*	538,081
Total Liabilities	571,233
Deferred Inflows – Pensions & OPEB	14,289
TOTAL NET POSITION	\$682,416

* Reflects GASB 68 recording of Net Pension Liability of \$434.8 million and GASB 75 recording of Net OPEB Liability \$3.7 million

FY 2019/20 General Fund (Audited)

Description	In Thousands
Total Revenues	\$225,487
Total Expenditures	215,636
Excess of Revenues Over Expenditures	9,851
Transfers In	172
Transfers Out	(8,948)
Net Change in General Fund Balance	\$1,075

General Fund Balance

Fund Balance Category (In Thousands)	FY 17/18 Audited	FY 18/19 Audited	FY 19/20 Audited
Total Nonspendable, Restricted, Committed, and Assigned Fund Balances	\$61,004	\$72,763	\$72,585*
Unassigned	2,734	-	-
Total Fund Balance	63,738	72,763	72,585
Section 115 Trust Bank Balance	4,896	6,250	7,503
Total with Section 115 Trust	\$68,634	\$79,013	\$80,088

* Includes \$16.5 million Strategic Planning Initiative Assignment

FY 2020/21 Mid-Year Budget Update



FY 2020/21 Mid-Year Budget Update

- **Current budgetary performance continues to project that the FY 2020/21 budget is balanced**
 - Major Citywide restructuring plan that was instituted reduced ongoing General Fund expenditures by ~\$6M / year
 - General Fund is projected to end the FY 2020/21 with a \$549K surplus

	Projected FY20/21
<i>(in thousands)</i>	
Revenues	\$223,041
Expenditures less UAL	194,026
CalPERS UAL	28,466
Total Expenditures	222,492
Surplus	\$549

FY 2021/22 Budget Development Calendar



Budget Development Calendar

Proposed Date	Item
February – May 2021	FY 2021/22 Internal Budget Development Process
May 17, 2021	FY 2021/22 Proposed Budget Study Session with City Council
June 7, 2021	FY 2021/22 Budget Adoption: City Council Public Hearing
June 21, 2021	FY 2021/22 Budget Adoption: Alternate Date
July 1, 2021	Fiscal Year 2021/22 Begins

Long-Term Budget Strategy Being Developed

- **FY 2020/21 Budget has a projected \$6.3M deficit, driven by increasing UAL costs**
 - Within the next 5-year period, UAL payments are projected to increase by ~\$10 million
- **UAL cost increases are driving significant future year projected General Fund budget deficits**

<i>(in thousands)</i>	Projected FY20/21	Projected FY21/22	Projected FY22/23	Projected FY23/24	Projected FY24/25
Revenues	\$223,041	\$228,439	\$233,277	\$237,529	\$241,260
Expenditures less UAL	194,026	202,278	207,098	211,327	214,960
CalPERS UAL	28,466	32,501	34,948	36,465	38,149
Total Expenditures	222,492	234,780	242,046	247,792	252,109
Surplus (Deficit)	\$549	-\$6,341	-\$8,769	-\$10,263	-\$11,849

Budget Adjustments Being Considered and UAL Refinance

- **As part of the FY 2021/22 budget development process, staff is currently working to assess other budget adjustment / stabilization strategies**
 - These efforts are being made through the lens of maintaining all existing service delivery levels, while reigning in other controllable costs
- **On March 1st , staff will present a possible UAL refinance plan and UAL funding policy for City Council consideration**
 - Staff has been assessing strategies to address UAL cost increases since late 2019
 - With the City in position to achieve rates in the 2-3% range, refinancing UAL costs would stabilize the City's existing budget situation
 - In early 2020, Finance Commission discussed the UAL refinance plan and UAL funding policy and were unanimously in support of these initiatives

Refinance 100% of UAL Debt Load

- Refinancing the City's UAL Debt addresses our projected future budgetary deficits

<i>(in thousands)</i>	Projected FY20/21	Projected FY21/22	Projected FY22/23	Projected FY23/24	Projected FY24/25
Revenues	\$223,041	\$228,439	\$233,277	\$237,529	\$241,260
Expenditures less UAL	193,026	201,278	206,098	210,327	213,960
CalPERS UAL	28,466	-	-	-	-
POB	-	25,268	25,268	25,268	25,268
Section 115 Trust	1,000	1,489	1,504	1,519	1,534
Total Expenditures	222,492	228,035	232,870	237,114	240,762
Surplus	\$549	\$404	\$407	\$415	\$498

UAL Pension Funding Policy

- The policy would require a minimum \$1 million annual allocation to the City's Section 115 Trust
- In addition, 50% of the first year refinance savings or \$489,000 (\$978,000 first year savings x 50%) will be set-aside as a fixed amount, set to increase with CPI moving forward
- Furthermore, the policy would dictate that 50% of any annual General Fund surplus be dedicated towards the City's Section 115 Trust
- When new UAL forms, repayment of the new UAL will be based on the Accelerated Repayment Schedule
- This policy is locked in unless there is a supermajority vote of the Council (6/7 votes) to set this policy aside

Accelerated Repayment Schedule

- Repayment of newly incurred UAL will be paid off according to the schedule below and be funded by the Section 115 Trust or General Fund Pension Stabilization Reserves

New Unfunded Accrued Liability	Payoff Time Period
\$0 to \$5,000,000	Within 1 and 5 years
\$5,000,001 to \$10,000,000	Within 5 and 7 years
\$10,000,001 to \$15,000,000	Within 7 and 9 years
\$15,000,001 to \$20,000,000	Within 9 and 10 years
\$20,000,001 or more	Within 10 and 15 years

Questions?



CITY OF HUNTINGTON BEACH

Finance Commission INTEROFFICE COMMUNICATION

TO: THE HONORABLE MAYOR AND CITY COUNCIL

FROM: HUNTINGTON BEACH FINANCE COMMISSION

DATE: MARCH 11, 2021

SUBJECT: ORANGE COUNTY POWER AUTHORITY CONCERNS

On February 24, 2021, Vice Chair McKeon of the Huntington Beach Finance Commission provided a presentation regarding the Orange County Power Authority (OCPA) community choice energy (CCE) joint powers authority (JPA). In that overview (see attached), Vice Chair McKeon provided a review of his thoughts regarding the OCPA CCE program.

As part of that presentation, Vice Chair McKeon highlighted three concerns with the OCPA JPA Agreement, including Section 2.1.5 (related to the ability of the JPA to acquire property via eminent domain); Section 6.3 (regarding future possible liabilities if the City were to withdraw from the JPA); and the possibility that the City's General Fund would need to cover any possible future liabilities of the JPA.

After deliberation, the Finance Commission voted 4-2-1 (Craver, Ray-Noes and Gledhill-Absent) to draft a memorandum advising the City Council of the concerns raised. Also, the Finance Commission discussed that the City Attorney's Office should have reviewed the overall JPA agreement to address the identified concerns.

A full overview of the concerns identified by the Finance Commission with the OCPA JPA Agreement are as follows:

(1) Section 2.1.5, the ability of the JPA to acquire property via eminent domain

"To acquire property by eminent domain, or otherwise, except as limited by Section 6508 of the Act, and to hold or dispose of property"

The Finance Commission is concerned that the OCPA has the ability to acquire property via the use of eminent domain as described in section 2.1.5.

(2) Section 6.3, continuing liability if the City were to withdraw from the JPA

“...shall be responsible liable to the Authority (OCJPA) for (a) any damages, losses or costs incurred by the Authority which result directly from the Party’s withdrawal or termination, including but not limited to, costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party’s load and removal of customers from the CCA Program resulting from withdrawal or termination of the Party... Further the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority”

The Finance commission has concerns that if the City were to withdraw from the OCPA either voluntarily or involuntarily after April 1, 2021, the City would be liable for the Power Purchase Agreements the OCPA purchases.

(3) Section 6.3, that the City’s General Fund would have to backstop any potential liabilities assumed from withdrawing

“In the implementation of this subsection 6.3, the Parties intend to the maximum extent possible without comprising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not the from the general fund of the withdrawing Party itself.”

The Finance Commission would like the City Council to be aware that there could be General Fund impacts from withdrawing voluntarily or involuntarily from the OCPA.

The Finance Commission understand that the City has until April 1, 2021, to withdraw from the OCPA JPA without incurring any penalties. The Finance Commission respectfully requests that the City Council consider the identified concerns, and determine if any further action or legal review is needed prior to the withdrawal deadline.

cc: Oliver Chi, City Manager
Dahle Bulosan, Chief Financial Officer
Michael Gates, City Attorney



Finance Commission Meeting

Agenda Item D-2: Community Choice Energy

February 24, 2021
Prepared by Casey McKeon

CCE Background

□ What is CCE?-

Community Choice Energy, which is a mechanism authorized by the State in 2002 via AB 117, whereby electrical service customers are provided an option in determining if they procure power through traditional IOU (Investor Owned Utility – Southern California Edison), or through a local government entity known as a CCE (Community Choice Energy) that purchases energy contracts on the open market. ***Note that SCE already meets the State's requirements on Renewable Energy generation.**

**Source: City Staff presentation to City Council, February 1st, 2021*

□ What is OCJPA?-

Orange County Joint Powers Authority, which is a separate public agency founded by the City of Irvine, is comprised of separate Cities (Parties) and their CCE's. Purpose is to establish an independent public agency in order to exercise power common to each Party to implement the CCE Program, and to exercise all other powers necessary and incidental to accomplishing this purpose.

**Source: Orange County Power Authority Joint Powers Agreement dated November 20, 2020*

CCE Benefits

□ *Stated Benefits:*

MRW & Associates was hired by H.B. in January 2021 as a consultant to prepare a CCA Review. Their report states that “over the long run, the CCA would likely be able to offer Orange County residents and businesses, power that is priced at or a few percent lower than that offered by Southern California Edison.”

MRW Continues: “The financial margins are smallest during the first years of operation, due to the initial investment in startup costs, loan repayments, and SCE rates. As such, OCPA’s targeted rate discount of 2% may not be achievable during the first years of operation; however, beyond 2023, OCPA’s rates **should** be lower than SCE’s rates.”

MRW Continues: “While feasible, CCA formation is not risk-free. OCPA will be participating in a competitive power market and subject to evolving state requirements and regulations. While an OCPA rate discount in the long run should be achievable, market prices and SCE rate volatility could combine to, in some isolated years, occasionally prevent the CCA from offering lower rates than SCE.”

CCE Benefits Cont.

What does 2% Savings Look Like.

The 2% savings is only on the Generation charges of your bill.

Southern California Edison will still be paid by the CCE to Deliver the Energy to your home or business.

Taking my monthly bill on the right, my Generation charges are \$47.57.

This equates to a savings of \$0.95/month.

Note: MRW's June 19, 2020 review of Irvine's CCE program concluded that their CCE would result in savings of 0.5% not 2%.

Usage kWh		Avg. cost		Total cost
Mid peak	93 kWh	x \$0.41776	=	\$38.86
Off peak	239 kWh	x \$0.27256	=	\$65.14
Super off peak	156 kWh	x \$0.23626	=	\$36.85
	488 kWh			\$140.85 Energy Charges
				-\$18.66 Other credits/charges
				\$122.19 Total

Costs are rounded and include delivery and generation charges. During season or price changes, averages are used. To view all charges and credits and to calculate your bill, refer to **Details of your new charges**.

Your past and current electricity usage

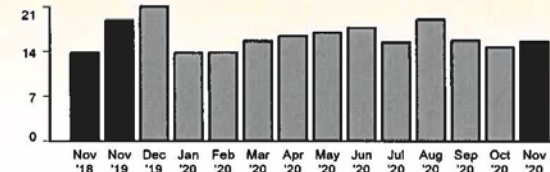
For meter 222010-829267 from 11/12/20 to 12/14/20
Total electricity you used this month in kWh

488

Your next billing cycle will end on or about 01/13/21.

Your daily average electricity usage (kWh)

2 Years ago: 13.45 Last year: 18.47 This year: 15.25



Details of your new charges

Your rate: TOUD-5-8PM
Billing period: 11/12/20 to 12/14/20 (32 days)

Delivery charges - Cost to deliver your electricity

Basic charge	32 days x \$0.03100	\$0.99
Baseline credit	362 kWh x \$0.07848	-\$28.41
Energy-Winter		
Mid peak	93 kWh x \$0.23554	\$21.91
Off peak	239 kWh x \$0.18549	\$44.33
Super off peak	156 kWh x \$0.17336	\$27.04
DWR bond charge	488 kWh x \$0.00580	\$2.83

Your Delivery charges include:

- \$9.16 transmission charges
- \$43.71 distribution charges
- -\$0.24 nuclear decommissioning charges
- \$6.46 public purpose programs charge
- \$6.13 new system generation charge

Generation charges - Cost to generate your electricity

DWR		
DWR energy credit	488 kWh x \$0.00007	-\$0.03
SCE		
Energy-Winter		
Mid peak	93 kWh x \$0.18222	\$16.95
Off peak	239 kWh x \$0.08707	\$20.81
Super off peak	156 kWh x \$0.06290	\$9.81

Your Generation charges include:

- \$0.43 competition transition charge

Your overall energy charges include:

- \$1.06 franchise fees

(Continued on next page)

Subtotal of your new charges		\$116.23
Huntington Beach UUT	\$116.23 x 5.00000%	\$5.81
State tax	488 kWh x \$0.00030	\$0.15
Your new charges		\$122.19

OCJPA Financial Costs

□ *Stated Costs:*

Irvine (“City”), the founding Party of the OCJPA, estimates that the OCJPA will need approximately \$2,500,000 for working capital to pay for implementation costs through a projected launch of the CCA Program in 2022.

This must be repaid to Irvine by January 1, 2027. Until this \$2,500,000 is repaid, Irvine will retain 2 votes whereby the other Parties in the OCJPA will have one vote per Party.

The City (Irvine) further estimates that the Authority (OCJPA) will need up to an additional \$8,000,000 to \$20,000,000 in the form of a credit facility for operational support and power procurement as well as other cash flow needs, **and** that any such credit facility may require cash collateral from an Authority member between \$2,000,000-\$5,000,000 (**“Launch Costs”**).

CCE Financial Risks

❑ Power Purchase Agreements (Contracts).

The main financial risks lie in the Power Purchase Agreements that the OCJPA will be purchasing and the subsequent liabilities.

California's SB 350 requires that 65% of all renewable energy contracts be a minimum of 10 years when most contracts are 15 years plus in length.

Marine Clean Energy held up as the model for CCE purchases their energy at \$76.80 per Mwh (megawatt hour) *Source: MCE recent financial update.

The Chart on the right is from the OCJPA Agreement which shows the City of H.B.'s annual Energy usage to be 1,046 Gwh. Converted to Mwh this would equate to 1,046,000 Mwh per year.

Using a conservative purchase price of \$65 per Mwh as opposed to Marine Clean Energy's rate of \$76.80/Mwh and using a contract length of 13 years, the financial liability is: $1,046,000 \times \$65 \times 13 = \text{\$884 million}$.

This is a large liability for a 2% savings.

EXHIBIT B
ANNUAL ENERGY USAGE BY JURISDICTION

	2019 Annual Load GWh ¹
City of Buena Park ²	450
City of Fullerton	676
City of Huntington Beach	1,046
City of Irvine	1,937
City of Lake Forest	459
Total	4,569

1. Annual energy usage is preliminary data and has not been validated by Southern California Edison (SCE) at the time of execution of the Agreement. This Exhibit will be updated without requiring an amendment of the Agreement upon SCE validation of the data.
2. City's 2019 annual load is an estimated value that may change pending preliminary and validated data from SCE.

CCE Financial Risks Cont.

- ❑ Limited ability to exit contract should the CCE Program fail to meet the savings targets

The language in the OCJPA agreement limits the ability for a Party (City member) to leave the OCJPA and get out of their Power Purchase Agreements which creates a massive liability for each City Member that is not addressed.

Proponents will say there is a “Financial Firewall” protecting each Party (City Member). *See section 5.7

Section 6, however; limits a Party’s Right To Withdraw, allows for Involuntary Termination of a Party member from the Board, and as highlighted on the right, once withdrawn in either of the two scenarios, the Party (City Member) **“may be subject to certain continuing liabilities as described in this Agreement.”**

**See next slide for Continuing Liability.*

“Financial firewall”

5.6.3¹ For the avoidance of doubt, nothing in this Agreement requires, nor shall the Authority for any reason ever require, that any Party adopt any local tax, assessment, fee or charge for the benefit of the Authority.

5.7 Obligations of the Authority. Unless otherwise agreed by the Parties, the debts, liabilities, and obligations of the agency shall not be the debts, liabilities, and obligations, either jointly or severally, of the members of the agency. A Party may, in its sole discretion, agree to assume one or more of the debts, liabilities, and obligations of the Authority if, and only if, such Party, with the approval of its governing body, agrees in writing to assume any such debts, liabilities, or obligation of the Authority.

SECTION 6: WITHDRAWAL AND TERMINATION

6.1 Right to Withdraw.

6.1.1 Right to Withdraw Prior to March 1, 2021. Except for the City of Irvine, a Party may withdraw from the Authority for any reason and without liability or cost prior to March 1, 2021 upon providing the Authority fifteen (15) days advance written notice.

6.1.2 Right to Withdraw After March 1, 2021. Except for the withdrawal provided for in Section 6.1.1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority’s fiscal year, by giving no less than one hundred eighty (180) days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party’s governing board. A Party that withdraws from the Authority pursuant to this subsection may be subject to certain continuing liabilities as described in this Agreement. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further actions as may be reasonably necessary to effectuate the orderly withdrawal of such Party.

6.2 Involuntary Termination. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement upon a two-thirds vote of the entire Board (excluding the vote of the Party subject to possible termination) taken in accordance with subsection 3.9.4.1. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered

CCE Financial Risks Cont.

❑ Limited ability to exit contract should the CCE Program fail to meet the savings targets

As demonstrated to the right, after withdrawal, either voluntarily or involuntarily, the Party (City Member) **“shall be responsible liable to the Authority (OCJPA) for (a) any damages, losses or costs incurred by the Authority which result directly from the Party’s withdrawal or termination, including but not limited to, costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party’s load and removal of customers from the CCA Program resulting from withdrawal or termination of the Party”**:

“Further the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority”

“In the implementation of this subsection 6.3, the Parties **intend** to the maximum extent possible without comprising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not the from **the general fund** of the withdrawing Party itself.

**See next slide for Continuing Liability.*

to the Party whose termination is proposed at least thirty (30) days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement that the Party has allegedly violated with supporting documentation. The Party subject to possible termination shall have the opportunity at the next regular Board meeting following the expiration of the thirty-day (30) day notice period to respond to any reasons and allegations that may be cited as a basis for termination. The Party’s response shall be evaluated at a public meeting prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in subsection 6.3. If the Board votes to terminate a Party’s membership in the Authority, the effective date of the termination shall be scheduled by the Board, in its reasonable discretion, to ensure adequate time for the transition of the terminated Party’s CCA Program customers to another electricity provider. The Parties expressly intend, agree and acknowledge that a Board action to terminate a Party’s membership in the Authority shall be upheld so long as it is not arbitrary and capricious, and is supported by substantial evidence.

6.3 Continuing Liability: Refund. Upon a withdrawal of a Party under subsection 6.1.2 or involuntary termination of a Party under subsection 6.2, the Party shall be responsible for any claims, demands, damages, or liabilities attributable to the Party through the effective date of its withdrawal or involuntary termination. Such Party also shall be responsible liable to the Authority for (a) any damages, losses, or costs incurred by the Authority which result directly from the Party’s withdrawal or termination, including, but not limited to, costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party’s load, and removal of customers from the CCA Program resulting from the withdrawal or termination of the Party; and (b) any costs or obligations associated with the Party’s participation in any program in accordance with the program’s terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. Except as otherwise specified, such Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the effective date of the Party’s withdrawal or involuntary termination. From and after the date a Party provides notice of its withdrawal or is terminated, the Authority shall reasonably and in good faith seek to mitigate any costs and obligations to be incurred by the withdrawing or terminated Party under this subsection through measures reasonable under the circumstances; provided, however, that this obligation to mitigate does not impose any obligation on the Authority to transfer any cost or obligation directly attributable to the membership and withdrawal or termination of the withdrawing or terminated Party to the ratepayers of the remaining Parties. Further the liability of the withdrawing or terminated Party shall be based on actual costs or damages incurred by the Authority and shall not include any penalties or punitive charges imposed by the Authority. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party’s liability for the costs described above. The withdrawing or terminated Party agrees to pay any such deposit determined by the Authority in consultation with a third party audit firm. Any amount of the withdrawing or terminated Party’s funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to that Party. In the implementation of this subsection 6.3, the Parties intend to the maximum extent possible without comprising the viability of ongoing Authority operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the

CCE Financial Risk Cont.

❑ *Limited ability to exit contract should the CCE Program fail to meet the savings targets*

MRW did not discuss General Funds when reviewing the Irvine CCE Program. MRW writes that Huntington Beach's General Funds are not at risk by "joining" the OCJPA which is clearly not the case.

To re-iterate, H.B.'s Power Purchase Contract Liability will be roughly **\$884 million**. Concerning is that our General Fund is a potential resource to pay for this \$884 million liability should we voluntarily or involuntarily leave the OCJPA.

The \$884 million in Power Purchase contracts will need to be accounted for on the City's Balance Sheet via the Governmental Account Standards Board (GASB). This has not been discussed or addressed.

Additional concerning language is that the OCJPA has the ability to acquire property within the City via eminent domain as described in section 2.1.5. *See page to the right.

Lastly, Lake Forest and Costa Mesa has recently backed out of the OCJPA and Santa Ana has chosen to wait to understand more about the potential costs and risks of the program.

additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its Purpose, including, but not limited to, each of the following powers:

2.1.1 Serve as a forum for the consideration, study, and recommendation of energy services for the CCA Program;

2.1.2 To make and enter into any and all contracts to effectuate the purpose of this Agreement, including, but not limited to, those relating to the purchase or sale of electrical energy or attributes thereof, and related service agreements;

2.1.3 To employ agents and employees, including, but not limited to, engineers, attorneys, planners, financial consultants, and separate and apart therefrom to employ such other persons, as it deems necessary;

2.1.4 To acquire, contract, manage, maintain, and operate any buildings, works, or improvements, including, but not limited to, electric generation resources;

2.1.5 To acquire property by eminent domain, or otherwise, except as limited by Section 6508 of the Act, and to hold or dispose of property;

2.1.6 To lease or license any property;

2.1.7 To sue and be sued in its own name;

2.1.8 To incur debts, liabilities, and obligations, including, but not limited to, loans from private lending sources pursuant to its temporary borrowing powers, such as California Government Code § 53850 *et seq.* and authority under the Act;

2.1.9 To form subsidiaries or independent associations or entities, if authorized

Recommended Language to amend OCJPA

These are the many Financial concerns raised by the language in the OCJPA Agreement. Please see to the right proposed language to revise the OCJPA Agreement that will remove the financial liability of \$884,000 from H.B.'s Balance Sheet.

The City has until April 1st, to amend the OCJPA language or drop of out without any penalties.

Thank you for your time.

Casey McKeon

Suggested supplement to Joint Powers Agreement doc if city council is determined to join OC CCA and lash city to value proposition of assuming power contract liability of \$884 million* in exchange for \$1 savings for HB consumers on their monthly electric bill (while SCE already complies with California clean energy mandates)

The terms and conditions stated in this Joint Powers Agreement (JP Agreement) amendment and the JP Agreement document effective November 20, 2020, including subsequent versions of the November 20, 2020 version, constitute the total agreement between the City of Huntington Beach (HB) and the Orange County Power Authority (OCPA) (including Orange County Community Choice Aggregation (OC CCA).

HB shall retain the right to depart from OCPA and OC CCA at any time without incurring any costs or liabilities, including costs for power purchase agreements, bond liability, debt service, etc., in the event that:

- (i) OC CCA fails to achieve and continually maintain a minimum 2% savings compared to Southern California Edison (SCE) prices; the calculation of OC CCA prices (\$ per KWh) shall include SCE costs levied on HB ratepayers for PCIA, Franchise Fee Surcharge, etc. OC CCA total price per KWh shall be a minimum of 2% lower than SCE prices for each rate class. This 2% shall be achieved without incurring any debt or issuing debt instruments, and/or
- (ii) OCPA, OC CCA, or any of its members, agents, representatives, legal representatives, etc., attempt to invoke *eminent domain* within HB jurisdictional boundaries or within view of those jurisdictional boundaries, and/or
- (iii) HB is involuntarily terminated from OCPA and or OC CCA, and/or
- (iv) any party introduces modified language, documents, or takes action that attempts to override or obviate this amendment.

Items (i) and (ii) and (iii) and (iv) are each referred to as "breaches." In the event HB is deemed to have accepted a breach(s), that acceptance shall not be construed as waiver of the city's right to exercise departure powers for any past or present breach. All terms and conditions included in this amended JP agreement shall remain intact and in force into perpetuity and shall not be modified or deleted without a "yes" vote to modify by each individual member of HB's city council (currently 7 members).

*** Huntington Beach's Power Purchase Agreement (PPA) Liability**

Total annual electric load, per Exhibit B of Implementation Plan = 1,046 GWh
= **1,046,000 MWh**. Assume blended PPA contracts average **13 years** long and blended PPA prices = **\$65** per megawatt-hour:

PPA liability = 1,046,000 x 13 x \$65 = **\$883,870,000.00**

Questions
