

AGENDA

ORANGE COUNTY POWER AUTHORITY BOARD OF DIRECTORS SPECIAL MEETING

Friday, February 10, 2023
9:00 a.m.

This meeting will proceed as a teleconference meeting in compliance with waivers to certain provisions of the Ralph M. Brown Act provided for under California Government Code section 54953(e)(1)(A) in relation to the Covid-19 state of emergency and recommended social distancing measures. There will be no location for in-person attendance. The Orange County Power Authority is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the Orange County Power Authority Board of Directors on the closed session prior to Item 4. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in the following manner:

To provide comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. Before or during Item 4, the Chair or Clerk will ask members of the public to join the queue to provide public comment. The queue will remain open for a reasonable amount of time to allow members of the public sufficient time to request to speak and inform the Board of the number of speakers. After such time, the queue will be closed and the members of the public who have joined the queue to speak will be recognized at the appropriate time may speak through Zoom video conference or telephonically. To join the queue on Zoom video conference by computer or mobile phone, use the “Raise Hand” feature. If joining the meeting using the Zoom dial-in number, you can raise your hand and join the queue by pressing *9. Members of the public will not be shown on video but will be able to speak when called upon.

Comments shall generally be limited to three minutes when speaking, provided that the Chair may equally reduce each speaker’s time to accommodate a large number of speakers or a large number of agenda items. If you have anything that you wish to be distributed to the Board, please provide it via comments@ocpower.org, who will distribute the information to the Members.

The public may participate using the following remote options:

ZOOM WEBINAR

Please click the link below to join the webinar:

[Launch Meeting - Zoom](#)

Dial-in: 1-669-900-6833

Webinar ID: 876 1164 3868

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENTS ON AGENDA ITEMS ONLY**

Opportunity for members of the public to address the Board on items on the agenda only.

5. **BOARD MEMBER INITIATED ITEMS**

1. **UPDATE THE ANNUAL ENERGY USE AND RESULTING VOTING SHARES EXHIBITS TO THE ORANGE COUNTY POWER AUTHORITY JOINT POWERS AGREEMENT** (Vice Chair Treseder)

Recommended Action:

As authorized by Section 3.9.3 of the Orange County Power Authority Joint Powers Agreement (JPA Agreement), (1) approve an adjustment to Exhibit B of the JPA Agreement to show the “Annual Energy Use” defined as the annual electricity usage, expressed in kWh, of accounts within the jurisdiction of each party to the JPA Agreement that are served by the Authority, and (2) approve an adjustment to Exhibit C of the JPA Agreement to show the current voting shares of each party to the JPA Agreement.

2. **ENGAGEMENT OF SPECIAL COUNSEL FOR PERSONNEL MATTERS** (Vice Chair Treseder)

Recommended Action:

Authorize a subcommittee consisting of two Board Members to select and hire special counsel to evaluate and advise on personnel matters.

3. **BOARD APPOINTMENTS** (Director Castañeda)

Recommended Action:

1. Appoint two (2) members of the Board of Directors to the Legislative & Regulatory Committee.
2. Appoint two (2) members of the Board of Directors to the Marketing Committee.

4. **DISCUSS & PROVIDE DIRECTION ON ISSUING AN REQUEST FOR QUALIFICATIONS (RFQ) FOR GENERAL COUNSEL PROFESSIONAL SERVICES AGREEMENT** (Director Castañeda)

Recommended Action:

Discuss and provide staff direction.

6. **CLOSED SESSION**

Prior to entering closed session, the Board will provide an opportunity for members of the public to provide public comment regarding the closed session item(s).

1. **AUDIT BY CALIFORNIA STATE AUDITOR’S OFFICE**

Pursuant to Government Code Section § 54956.75

2. PUBLIC EMPLOYEE APPOINTMENT

Pursuant to Government Code Section 54957

Title: Interim General Counsel

7. ADJOURNMENT

Compliance with the Americans with Disabilities Act

Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact 949-263-2612. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at www.ocpower.org. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board prior to or during the Board meeting are available for public review as required by law. Late-arriving documents received during the meeting are available for review by making a verbal request to the Board Secretary in the Zoom meeting room.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item X.X

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: Update Annual Energy Use and Voting Shares

Date: February 10, 2023

RECOMMENDED ACTION

Director Treseder has requested an update to the weighted voting exhibits of OCPA's Joint Powers Agreement and that such exhibits be presented for approval at the Special Meeting.

BACKGROUND

Weighted voting allows Directors to vote in accordance with the proportion of electricity use by users within their respective jurisdictions. This type of voting can be invoked by two or more Directors in limited circumstances, such as when there is a tie vote by the Board for Directors or to immediately nullify an action that was passed by an "equal vote" of the Board.

Weighted voting is governed by Section 3.9.3 of the Joint Powers Agreement. This section provides a formula for the first two years following the Effective Date of the Agreement (during which time the JPA is getting up and running and will not be serving load directly) and a separate formula following the second anniversary of the Effective Date (which is based on actual electrical use served by OCPA to accounts within each member jurisdiction). The exhibits for weighted voting are required to be updated each year no later than March 1 based on prior year numbers.

The actual language of Section 3.9.3 is as follows:

3.9.3 Voting Shares Formula. When a Voting Shares Vote is requested by two or more Directors, voting shares of each Director shall be determined by the following formula:

$$(\text{Annual Energy Use} / \text{Total Annual Energy}) \times 100$$

For purposes of this formula (a) "**Annual Energy Use**" means (i) for the first two years following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("**kWh**"), within the jurisdiction of the Party appointing the Director(s) and (ii) following the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within the jurisdiction of the Party appointing the Director(s) that are served by the Authority, and (b) "**Total Annual Energy**" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit B and the initial voting shares are designated in Exhibit C. Both Exhibit B and Exhibit C shall be adjusted annually as soon as reasonably practicable after January 1 of each year, but no later

than March 1 of each year, subject to the approval of the Board. Voting shares attributable to Irvine shall be divided equally between the Irvine Directors.

The second anniversary of the Effective Date of the Joint Powers Agreement occurred on November 20, 2022, so OCPA will now be operating under clause (ii) of the formula.

Analysis

There is a practical problem with the Section 3.9.3 formula in that the data reported by SCE has lagged considerably and is incomplete and therefore does not provide an accurate picture of actual electrical annual use. As OCPA launched in 2022, OCPA also does not have complete data of actual use for a full year, so the data for 2022 would have to come from multiple sources. OCPA staff has looked at a number of alternatives and determined that the Board-adopted FY2022/23 budget was the most fair and readily available measure until such time as there is a full year of actual primary data (which will be the case in 2023 for the Founding Members of OCPA). In addition to a calculation based on load assumptions in the current FY2022/23 adopted budget, staff also tested a method of synthesizing projected load with partial year actual load and partial-year forward projected load to adjust for actual customer opt-actions. The result was within a tight margin and did not have a material affect on majorities of member pairs.

Another issue that arises is that the formula following the second anniversary has an adverse impact on the weighted voting of a new member, as it is based on actual electrical use by accounts served by OCPA as opposed to all electrical load within the new member's jurisdiction. As there will be a period during which any new member is not actually being served by OCPA, there arises a situation where a strict reading of Section 3.9.3 results in a new member having a 0% share for weighted votes. This means that under the provisions of the Joint Powers Agreement, a new member would have a vote for regular votes, but would lose that vote if weighted voting is invoked.

There are legitimate questions about whether this was the intent of the Founding Members when the Joint Powers Agreement was adopted or is an unintended consequence. There would also be an immediate consequence on the voting rights of the County of Orange.

Attached to this staff report are exhibits which show the weighted voting of the members using the adopted budget based load data, a scenario where the County of Orange is included and a scenario where the County of Orange is excluded.

Recommended Action by Staff

Given the importance of the right to vote, staff is seeking Board guidance on two issues:

1. Board approval of the source of electrical usage data that will be used for the weighted vote calculation for 2023; and
2. The direction of the Board with respect to the impact of the language of Section 3.9.3 on new members such as the County of Orange.

Staff is soliciting information from other CCAs that have similar weighted voting provisions to see how other CCAs have dealt with this issue and will be ready to present an update on such information during the Special Meeting.

FISCAL IMPACT

There is no fiscal impact.

ATTACHMENT

Alternative Scenarios for Updating Exhibit B (Annual Energy Use by Jurisdiction) and Exhibit C (Party Voting Shares) of the Joint Powers Agreement.

EXHIBIT B
ANNUAL ENERGY USE BY JURISDICTION

Effective: _____, 2023

Jurisdiction	GWh (2022)
City of Buena Park	297
City of Fullerton	513
City of Huntington Beach	793
City of Irvine	1,470
County of Orange (unincorporated)	555
Total	3,628

EXHIBIT C
PARTY VOTING SHARES

Effective: _____, 2023

Jurisdiction	Voting Share
City of Buena Park	8.2%
City of Fullerton	14.1%
City of Huntington Beach	21.9%
City of Irvine	40.5%
County of Orange (unincorporated)	15.3%
Total	100.00%

EXHIBIT B
ANNUAL ENERGY USE BY JURISDICTION

Effective: _____, 2023

Jurisdiction	GWh (2022)
City of Buena Park	297
City of Fullerton	513
City of Huntington Beach	793
City of Irvine	1,470
County of Orange (unincorporated)	0
Total	3,073

EXHIBIT C
PARTY VOTING SHARES

Effective: _____, 2023

Jurisdiction	Voting Share
City of Buena Park	9.7%
City of Fullerton	16.7%
City of Huntington Beach	25.8%
City of Irvine	47.8%
County of Orange (unincorporated)	0%
Total	100.00%